

Obligations of Third States and Corporations to Prevent and Punish Genocide in Gaza

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5 June 2024



Executive Summary

On 26 January 2024, the International Court of Justice (ICJ) issued [an interim Order](#) in response to South Africa's application instituting proceedings against Israel alleging violations of the Genocide Convention for its actions in Gaza since 7 October 2023. The Court determined that 'at least some of the rights claimed by South Africa and for which it is seeking protection [i.e. the right of the Palestinians in Gaza to be protected from genocide] are plausible'. It also found a 'real and imminent risk' of irreparable harm to the rights protected under the Convention [i.e. the right of the Palestinians in Gaza to be protected from genocide] existed. The Court issued provisional measures ordering Israel to, among other things, 'take all measures within its power' to prevent the commission of acts within the scope of Article II of the Genocide Convention [i.e. killing members of the group, causing bodily or mental harm to them, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and imposing measures intended to prevent births within the group]¹ and 'to prevent and punish the direct and public incitement to commit genocide' against the Palestinians in Gaza.

This is an expert legal opinion, prepared by Irene Pietropaoli in her personal capacity, commissioned by [Al-Haq Europe](#) and [SOMO](#) to examine the legal consequences of the ICJ's order for Third States and corporations.² The brief first examines the obligations for Third States arising from the ICJ's order in relation to their trade and economic relations with Israel and in relation to companies domiciled in their territory that are involved in business activities with or in Israel, as well as the legal implications for corporations with operations or business relationships with or in Israel. It then recommends actions that Third States and corporations should take in line with their obligations under international law not be complicit in and to ensure the prevention of genocide.

The obligation of Third States to comply with the ICJ Order flows directly from the Genocide Convention. Article I of the Convention requires States to undertake 'to prevent and to punish genocide'. Under the Genocide Convention, all States have a negative obligation not to commit or be complicit in genocide and positive obligations to prevent and to punish genocide.

This opinion is published in the context of third States being further put on notice of there being [reasonable grounds to believe](#) crimes against humanity and war crimes are being committed by Israel in Gaza, in light of the arrest warrants requested by the International Criminal Court (ICC) Prosecutor for key Israeli officials (the Prime Minister and Minister of Defence), including *inter alia* for the crimes against humanity of extermination and persecution, and the war crimes of starvation, wilful killing, and the causing of great suffering or serious injury to body or health.³

¹ *South Africa v Israel*, para 86(1) by 15 votes to two.

² While the current situation in Gaza needs to be understood in the wider context of ongoing occupation of Palestinian territories, illegal settlements, and violations of International Humanitarian Law by Israel, this opinion deals exclusively with the implications of the ICJ orders in relation to Third States and corporations domiciled in those home States.

³ ICC, [Statement of ICC Prosecutor](#) Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine, 20 May 2024.

Obligation not to be Complicit in the Commission of Genocide

The ICJ clarified in the [Bosnia v Serbia](#) case that a State is responsible for complicity if 'its organs were aware that genocide was about to be committed or was under way, and if the aid and assistance supplied, *from the moment they became so aware onwards*, to the perpetrators of the criminal acts... enabled or facilitated the commission of the acts.' As such, the obligation to refrain from being complicit through aid or assistance begins the moment the State becomes aware of the existence of a serious risk that genocide may be committed. The Order issued by the ICJ on 26 January finding 'a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible' means that States are now aware of the risk of genocide being committed in Gaza.

Third States must consider that their military or other assistance to Israel's military operations in Gaza may put them at a risk of being complicit in genocide under the Genocide Convention. Corporations and their managers, directors and other leaders could also be held directly liable for the commission of acts of genocide, as well as war crimes and crimes against humanity. Article VI of the Genocide Convention specifies that 'persons' may be held liable for genocidal acts – which include individual businessmen or corporate managers as natural persons and may include corporations as legal persons. While the International Criminal Court (ICC) does not have jurisdiction over legal entities, company personnel as natural persons of States Parties to the Rome Statute may fall under its jurisdiction. Under Article 25(3)(c) of the Rome Statute, the ICC can prosecute those who facilitate the commission of crimes, including through the provision of means. State officials involved in arms exports may be individually criminally liable for aiding and abetting acts of genocide committed by the Israeli government.

The prohibition to commit genocide is a *jus cogens* norm from which no party, including corporations, can derogate. In situations of armed conflict, additional international humanitarian and international criminal law standards apply to corporations and individual business leaders, who must consider whether their operations contribute to gross human rights violations or international crimes. International humanitarian law binds State and non-State actors, including businesses, as well as individual business leaders whose activities are linked to international crimes during an armed conflict. The [UN Guiding Principles on business and human rights \(UNGPs\)](#) also provide that business should respect the standards of international humanitarian law in situations of armed conflict.

Corporate complicity implies that corporations may be 'aiding' or 'abetting' genocidal acts perpetrated by the State. International criminal law suggests that direct complicity requires intentional participation, but not necessarily an intention to do harm, only knowledge of foreseeable harmful effects. A corporation or individual businessperson who knowingly assists a State in violating customary international law, including the prohibition of committing genocide, may be complicit in such a violation. It is not required that the corporate accomplice desires that the principal offence is committed. As such, a corporation or corporate leader may be complicit in the commission of genocide where it decides to participate through assistance in the commission of the acts by the State of Israel and that assistance contributes to the commission of genocide. The corporate accomplice can be liable for contributing to genocidal acts even if the State of Israel, as primary perpetrator, is not found responsible. Nor does the corporate actor need to intend the results; it is enough if the corporation or its agents knew of the likely effects

of their assistance and if such support has a 'substantial effect' on the commission of the crime of genocide. Companies investing in or partnering with the Israeli government or Israeli State-owned enterprises face a salient risk of aiding, abetting, facilitating, or otherwise contributing to genocide or other violations of international humanitarian law. Business activities may be considered directly linked to the commission of a crime during an armed conflict if they provide direct support – for example, military, logistical, intelligence, or financial assistance – even if they do not participate in the actual fighting and even if the business did not intend to support a party to the conflict. Direct support, either through participation in or the provision of essential means for, the commission of the crime can translate into international criminal responsibility for the individual actors concerned.

Arms, weapons, ammunition, vehicles, and other military supplies, including parts, technology, and fuel, are essential for the activities of the Israeli air force, ground forces, and navy and , therefore, make an essential contribution to violations of international humanitarian law and genocidal acts against the Palestinians in Gaza. Dozens of companies domiciled in Third States (especially in the US and Germany) are currently [providing Israel with weapons and other military equipment](#) used in its Gaza in operations that allegedly amount to genocide, war crimes, crimes against humanity, and other violations of international human rights and humanitarian law. They are doing so knowing that their supplies are used in Israel's war in Gaza. These companies and their staff risk charges of complicity in genocide and other international crimes in their home States and/or international courts. Banks and other financial institutions that finance companies selling arms or other military supplies to the Israeli military or that provide funds directly to the Israeli State may contribute to the commission of genocide and violations of international humanitarian law in Gaza. [As detailed below](#), in this case the fungibility of monetary funds is crucial. Some activities, such as the purchase of Israeli government bonds, which the Israeli State [has relied on and encouraged](#) to finance its war on Gaza, can make banks and other financial institutions complicit in genocide.

In addition to the commission of genocide, international law criminalises direct and public incitement to commit genocide as listed in Article 25 of the Rome Statute. Traditional and social media companies and their employees risk international criminal liability when they provide a platform to the perpetrators of direct and public incitement to commit genocide. To the extent that these platforms host such content and fail to prevent its publication or remove it (while at the same time taking due care to ensure the preservation of evidence), companies and their leaders risk be complicit in incitement of genocide. Companies also risk complicity in the Israeli government's violations even just by carrying out their business activities in the country and contributing to the wider economy, for example, and paying taxes to a government that is committing genocide. Silent or tacit complicity, [as detailed below](#), is apparent when a company does not directly contribute to or benefit from the genocide but is aware of it and fails to distance itself from it – assuming there is still a close link with the situation, for example a company that carry business in Israel and pay taxes to the Israeli government.

Obligation to Prevent Genocide

The obligation to prevent genocide and the corresponding duty to act starts, as the ICJ clarified in the *Bosnia v Serbia* case, 'at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards,

if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit'. For the obligation to prevent to arise it is necessary i) that the situation amounts to a 'serious risk', and ii) that the State knows or should have known about that situation. The 'serious risk' criteria of commission of genocide is triggered by the 'plausibility' criteria of commission of genocide required for the indication of provisional measures in *South Africa v Israel*. The ICJ's finding of 'plausible rights' and 'imminent risk' constitutes knowledge of the risk of genocide triggers third States' legal obligations under the Genocide Convention. Third States need to consider that the real and imminent risk established by the ICJ Order may solidify the case that the threshold of 'serious risk' is now met and as such must take immediate actions to prevent the genocide of Palestinians in Gaza, independently of the ICJ final decision on the merits.

In *Bosnia v Serbia*, the ICJ explained that the duty to prevent requires States 'to employ all means reasonably available to them' to prevent genocide. This obligation is one of conduct and not of result, meaning that it is not about whether the State achieves the result of preventing genocide, but whether it took all measures which were within its power and which might have contributed to preventing the genocide. States' obligation to prevent genocide is not a passive obligation, but implies the notion of 'due diligence', which requires an assessment based on facts. The evaluation requirement under the Genocide Convention will now have to factor in the duty of States 'to employ all means reasonably available to them' to prevent genocide.

All States must ensure respect for international humanitarian law by parties to an armed conflict, as required by 1949 Geneva Conventions and customary international law. The duty to 'ensure respect' for humanitarian law applies 'in all circumstances', including when Israel claims it is defending itself. The obligation 'to ensure respect' flowing from common Article 1 of the [Geneva Conventions of 1949](#) also has an external dimension related to ensuring respect for the Conventions by others that are Party to a conflict. This duty to ensure respect by others comprises both a positive and a negative obligation. Under the positive obligation, States must do everything reasonably in their power to prevent and bring such violations to an end, in particular by using their influence on a State Party to a conflict. The duty to ensure respect for the Geneva Conventions is particularly strong in the case of a partner in a joint operation, even more so as this case is closely related to the negative duty neither to encourage nor to aid or assist in violations of the Conventions. The fact, for example, that a State Party participates in the financing, equipping, arming or training of the armed forces of a Party to a conflict places it in a unique position to influence the behaviour of those forces, and thus to ensure respect for the Conventions. Under the negative obligation, States Parties may neither encourage, nor aid or assist in violations of the Conventions by Parties to a conflict. Financial, material, or other support in the knowledge that such support will be used to commit violations of humanitarian law would violate common Article 1, even though it may not amount to aiding or assisting in the commission of a wrongful act by the receiving States for the purposes of State responsibility. An illustration of a negative obligation is in the context of arms transfers.

The Genocide Convention imposes a minimum legal obligation on States to each take reasonable action to prevent genocide, a duty that extends extraterritorially and applies regardless of whether any one State's actions alone are sufficient to prevent genocide. In the

Bosnia v Serbia case, the ICJ clarified that in determining whether a State has discharged its obligations to prevent genocide, its 'capacity to influence effectively the action of persons likely to commit, or already committing, genocide' must be considered. This capacity 'itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events'. A State can be held responsible when it fails to implement all lawful means under its authority. There is heightened responsibility for Third States that have the capacity to influence the State committing genocide. While the issuance of provisional measures by the ICJ, triggers all Third State's duty to prevent genocide, there is a greater responsibility for States that have strong political ties with Israel and provide financial aid and weapons – for example the US, the UK, and Germany. Those States have the 'capacity to influence effectively the action of the relevant persons likely to commit or already committing genocide' and are thus required to take immediate active steps towards prevention.

Recommendations

Following the ICJ Order and based on their obligations under the Genocide Convention and international humanitarian law, Third States need to take immediate actions to ensure that their economic relationship with Israel and the activities of corporations domiciled in their territories do not breach their duty to prevent and to not be complicit in genocide. Corporations also have such responsibility independently from their Home States' action and regulation.

1. **Arms embargo:** Third States should impose an arms embargo, ceasing the sale, transfer and diversion of arms, munitions, parts and other military equipment to Israel and refrain from the export, sale or transfer of jet fuel, surveillance and technologies and less-lethal weapons, including 'dual-use' items where there is reason to suspect their use in the commission of genocide. Common Article 1 of the Geneva Conventions requires States Parties to refrain from transferring weapons if there is an expectation, based on facts or knowledge of past patterns, that such weapons would be used to violate the Conventions. This would require an appropriate assessment prior to any arms transfer, as well as any transfer of surveillance and AI technologies, and sharing of intelligence data. Such transfers are prohibited even if the exporting State does not intend the arms to be used in violation of the law or does not know with certainty that they would be used in such a way if there is a clear risk. States Parties to the UN [Arms Trade Treaty](#) (ATT) have additional obligations to deny arms exports if they 'know' that the arms 'would' be used to commit international crimes, or if there is an 'overriding risk' that the arms transferred 'could' be used to commit serious violations of international humanitarian law. EU member states are further bound by [EU Common Position on Arms Exports \(EUCP\)](#). Countries should also immediately halt the transfer of jet fuel shipment to Israel for use by the Israeli military. Independently from home State regulation, companies that sell weapons, arms, ammunition, technology, oil and fuel, intelligence, and other military supply to the government of Israel have their own responsibility to respect human rights, and abide by international humanitarian law and international criminal law, as recognised in the [UN Guiding Principles on Business and Human Rights](#) (UNGPs) 'over and above compliance with national laws and regulations'. As [detailed below](#), an arms embargo against Israel should also cover buying and importing of Israeli weapons, as well as joint research in bilateral and multilateral military or dual use projects.
2. **Sanctions and trading relations:** Third States should impose further sanctions targeting Israeli entities, including arms companies and financial institutions and organisations, that are being used for incitement of genocide, such as media platforms responsible for propaganda. Third States are required under the Genocide Convention to 'employ all means reasonably available' to prevent genocide. In accordance with their duties under the Genocide Convention, Third States must take immediate action to prevent the risk of genocide in Gaza, commensurate with their capacity to influence Israel. The capacity of a state to 'influence effectively' Israel's actions in Gaza is in part determined by the depth of its economic ties to Israel. A key area of certain States capacity to influence Israel is that of trade relations. Third States with the strongest trade relations with Israel (especially the US, the UK, Germany and other EU Members States) must view these

relations as a means to prevent genocide if effectively leveraged to influence Israel's conduct in Gaza. Third States engaged in commercial activities with companies potentially implicated in acts of genocide in Gaza, for example through public procurement, as shareholders, or through public pension funds and other investments should terminate such contracts and exclude such companies. Pension funds should also withdraw their investments from Israeli banks and other financial institutions. Third States should also impose a trade ban on any products and services of companies that are implicated in the illegal settlements.

3. **Criminal and administrative proceedings:** Prosecuting authorities of Third States should, based on their obligations under the Genocide Convention to prevent and punish genocide and the ICJ Order, investigate and prosecute companies (where national laws allow) and corporate officials for their involvement in acts of genocide in Gaza. The UNGPs clarify that in conflict-affected areas home States should consider 'exploring civil, administrative, or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses' such as genocide. Law enforcement authorities should also order a halt of the export of weapons to Israel. Lawyers could initiate injunction actions to stop the respective government from exporting or authorizing exports of weapons to Israel. This applies to states such as the US, Canada, Germany, Italy, the UK, and the Netherlands. Such an obligation to halt exports would stem from Article 1 of the Genocide Convention, Article 6(3) Arms Trade Treaty, and Article 2 of the EU Council Common Position. Home States should hold accountable any business enterprises contributing to the Israeli state and military's capacity for inciting and committing genocidal acts in Gaza.
4. **Business and human rights responsibilities:** Home States of companies that have operations or business relationships in Israel should engage 'at the earliest stage possible' with those companies to help them to identify and prevent the risk of their activities being linked to acts of genocide in Gaza. Home States should 'deny access to public support and services for companies 'involved with gross human rights abuses', such as acts of genocide. Home States should also ensure that their 'policies, legislation, regulations, and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses' such as genocide. Finally, home States should 'foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies'. Business with operations or business relationships in Israel should address a range of complex impacts related to conflict and its root causes and their impact on the wider economy. It is critical for companies to have a thorough understanding of the conflict and to integrate conflict analysis into their human rights due diligence – this is not limited to the current situation in Gaza and the rights covered by the ICJ Order, but inevitably needs to expand to understanding the business impact and contribution of the wider conflict, occupation, illegal settlements, and violations of international humanitarian and human rights law by successive Israeli governments, as well as individuals and companies linked to it. Companies must conduct [heightened human rights due diligence](#) regarding both their operations and their whole supply chain to

identify risks of where they may be contributing to violations against Gaza's civilian population. The UNGPs are clear that before considering ending relationships, a business enterprise should seek to be part of the solution by addressing adverse impacts through exercising leverage. Generally, entities with which an enterprise has a business relationship should be given notice and opportunities to correct and remedy adverse impacts, with appropriate escalation. There are, however, special considerations in cases of possible complicity in gross human rights abuses. As the UNGPs make clear, these kinds of cases should be treated with the utmost seriousness, and businesses should be expected to respond 'as a legal compliance issue'.

The current situation at hand, involving genocide and crimes against humanity, in addition to the ongoing international humanitarian law and human rights violations related to the overall prolonged military occupation and apartheid, is one of these serious situations. In relation to the current situation in Gaza, where business enterprises lack the leverage to prevent or mitigate adverse impacts and is/are unable to increase it, they should consider ending any existing relationships. If, like in relation to the current situation in Gaza, there are risks of 'being involved in gross abuses of human rights such as international crimes, [a business] should carefully consider whether and how it can continue to operate with integrity in such circumstances'. Risks are particularly salient for companies investing in or partnering with State-owned enterprises or entities tied to the Israeli government, which could find themselves aiding, abetting, or otherwise indirectly facilitating Israel's genocide and violations of international law. In this respect, firms providing arms or weapons-making materials, dual-use technologies or military equipment risk being directly complicit in ongoing violations. Companies must also cease any activity or cut financial ties that could contribute directly or indirectly to ongoing crimes committed by the Israeli authorities or cease any activity for which they cannot efficiently implement measures to prevent or address negative impacts. Companies whose activities, products, or services are directly linked to severe human rights violations currently happening in Gaza are expected to have a rapid response and to consider responsible disengagement. Businesses should also develop strong and effective mechanisms to provide or cooperate in providing remedy to rights holders in Palestine that have been affected by their operations.

Introduction

On 26 January 2024, the International Court of Justice (ICJ) issued [an interim Order](#) in response to South Africa's application instituting proceedings against Israel alleging violations of the Genocide Convention⁴ for its actions in Gaza since 7 October 2023.⁵ The Court determined that 'at least some of the rights claimed by South Africa and for which it is seeking protection [i.e. the right of the Palestinians in Gaza to be protected from genocide] are plausible'.⁶ It also found a 'real and imminent risk' of irreparable harm to the rights protected under the Convention [i.e. the right of the Palestinians in Gaza to be protected from genocide] existed.⁷ The Court issued provisional measures, ordering that Israel, among other things, 'take all measures within its power' to prevent the commission of acts within the scope of Article II of this Convention [i.e. killing members of the group, causing bodily or mental harm to them, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and imposing measures intended to prevent births within the group]⁸ and 'to prevent and punish the direct and public incitement to commit genocide' against the Palestinians in Gaza.⁹ In its [Decision](#) of 16 February responding to South Africa's Letter requesting the Court's *proprio motu* indication of additional provisional measures, the Court clarified that the Genocide Convention and its 26 January Order require Israel to 'ensur[e] the safety and security of the Palestinians in the Gaza Strip'. On 28 March, the Court issued a [second round](#) of provisional measures ordering Israel to ensure that its military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected group under the Genocide Convention, including by preventing, through any action, the delivery of urgently needed humanitarian assistance.¹⁰ On 24 May, the ICJ granted South Africa's request for modified provisional measures

⁴ Convention on the Prevention and Punishment of the Crime of Genocide, open for signatures 9 December 1948, entry into force 12 January 1951. Article II of the Genocide Convention defines the crime of genocide outlining its two main elements: (1) specific underlying acts, namely, the material elements of the crime; and (2) specific intent, namely, the mental state required of the person committing the material elements of the crime. The Genocide Convention and the Rome Statute of the International Criminal Court outline the following five specific underlying acts, any one of which may be constitutive of the crime of genocide: a) Killing members of a national, ethnical, racial or religious group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent births within the group; and e) Forcibly transferring children of the group to another group.

⁵ International Court of Justice (ICJ) Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Indication of Provisional Measures, [Order of 26 January 2024](#) (South Africa v Israel).

⁶ *South Africa v Israel*, para 54. The Order uses the term 'plausibility' referring to some of the rights for which protection was sought by South Africa (some of the rights are plausible), while 'real and imminent' referring to the risk of irreparable prejudice to these rights (the risk is real and imminent). The ICJ granted provisional measures on 26 January 2024 because it accepted (para 74) that there was a real and imminent risk of prejudice to the right found to be plausible, which is the right to protection from genocide. This is reinforced by the measures on 28 March 2024 (see in particular para 40) based on a 'real and imminent risk' of irreparable prejudice to the right for which protection was sought by South Africa (i.e. the right of Palestinians in Gaza to be protected from genocidal acts).

⁷ *South Africa v Israel*, para. 74.

⁸ *South Africa v Israel*, para 86(1) by 15 votes to two.

⁹ *South Africa v Israel*, para 86(3) by 16 votes to one, also ordered to 'take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip', para 86(4).

¹⁰ ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) [Order of 28 March 2024](#).

and [ordered](#) Israel to 'immediately halt its military offensive, and any other action in the Rafah Governorate'.¹¹ In both the 28 March and the 24 May orders, the Court found that the current situation 'entails a further risk of irreparable prejudice to the plausible rights claimed by South Africa [i.e. the right of the Palestinians in Gaza to be protected from genocide] and that there is urgency, in the sense that there exists a real and imminent risk that such prejudice will be caused before the Court gives its final decision'.¹²

This is an expert legal opinion commissioned by [Al-Haq Europe](#) and [SOMO](#) to examine the legal consequences of the ICJ's order for Third States (all States other than Israel and South Africa) and corporations.¹³ The brief first examines the obligations for Third States arising from the ICJ's order in relation to their trade and economic relations with Israel and in relation to companies domiciled in their territory that are involved in business activities in Israel, as well as the legal implications for corporations with operations or business relationships in Israel. It then recommends actions that Third States and corporations should take in line with their obligations under international law in relation to the ongoing situation in Gaza to ensure the prevention of and not being complicit in genocide.

¹¹ ICJ, Order, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), [Order of 24 May 2024](#), para 50.

¹² Oder of 28 March, para 40 and Oder of 24 May, para 47.

¹³ See also SOMO, [Making a Killing](#), 24 April 2024.

Obligations of Third States and Corporations

The prevention of acts of genocide, a crime under international law,¹⁴ is a fundamental duty of all States under international law, part of *jus cogens* (peremptory norm of international law).¹⁵ Peremptory norms reflect and protect fundamental values of the international community of States and are recognized as norms from which no derogation is permitted, universally applicable and hierarchically superior to other rules of international law.¹⁶ The Genocide Convention creates obligations for State Parties, which are 'obligations *erga omnes partes*, in the sense that each State party has an interest in compliance with them in any given case'.¹⁷

The obligation of Third States to give effect to the ICJ Order flows directly from the Genocide Convention, as well as from the customary obligations of States under international law. Article I of the Convention requires States to undertake 'to prevent and to punish genocide'. Article III lists five acts that are prohibited by the Convention: i) genocide, ii) conspiracy to commit genocide, iii) direct and public incitement to commit genocide, iv) attempt to commit genocide, and v) complicity in genocide. In 1951, the ICJ held that the Genocide Convention imposes obligations on all States Parties which arise both from the universal character of the condemnation of genocide and of the cooperation required 'to liberate mankind from such an odious scourge'.¹⁸ The ICJ Order in *South Africa v Israel* reaffirmed the *erga omnes partes* principle, which entails that the obligations under the Genocide Convention 'are owed by any State party to all the other States parties'.¹⁹ Under the Genocide Convention, all States have a negative obligation not to commit or be complicit in genocide and positive obligations to prevent and to punish genocide.

1. Obligation not to be Complicit in the Commission of Genocide

Obligations under the Genocide Convention

States are obligated to avoid complicity in genocide, as stipulated by Article III(e) of the Genocide Convention.²⁰ Complicity as defined in the 2007 *Bosnia v Serbia* case 'includes the provision of

¹⁴ Genocide is one of the crimes that falls under the jurisdiction of the International Criminal Court (Article 6 of the [Rome Statute](#)).

¹⁵ The International Law Commission is still working on '[Peremptory norms of general international law \(Jus cogens\)](#)' but there has never been a doubt that the prohibition of genocide is part those norms: e.g. Dire Tladi, Second report on jus cogens, UN General Assembly, 16 March 2017. UN Doc. A/CN.4/707, paras. 44, 57, 85.

¹⁶ 'a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted' Vienna Convention on the Law of Treaties, 1969, article 53. Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), adopted by the International Law Commission, 2022; 2 YBILC 2022, Part Two. Regarding peremptory norms, the ILC affirmed that states have the duty to "bring to an end through lawful means" the breach of a peremptory norm, and that States shall not "recognize as lawful" a situation created by that breach "nor render aid or assistance in maintaining that situation." (Conclusion 19, paras. 1-2).

¹⁷ *South Africa v Israel*, para 33.

¹⁸ Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p 23.

¹⁹ para 33.

²⁰ Customary international law recognises the concept of 'aiding and assisting' an international wrongful act. Responsibility of States for Internationally Wrongful Acts, adopted by UN General Assembly Resolution 56/83, 12 December 2001.

means to enable or facilitate the commission of the crime'.²¹ The ICJ clarified that complicity in genocide requires, firstly, that a State must supply aid or assistance to the perpetrators of genocide, meaning there must be an enabling or facilitating link between the act of assistance and the commission of a wrongful act.²² Secondly, the ICJ held that the supporting State must have 'full knowledge of the facts' and awareness of the specific intent (*dolus specialis*) of the principal perpetrator.²³ It is crucial here is that the State is aware of the intent to commit genocide, but specific intent by the assisting State is not required.

The ICJ clarified in *Bosnia v Serbia* that a State is responsible for complicity if 'its organs were aware that genocide was about to be committed or was under way, and if the aid and assistance supplied, *from the moment they became so aware onwards*, to the perpetrators of the criminal acts, or to those who were on the point of committing them, enabled or facilitated the commission of the acts.'²⁴ As such, the obligation to refrain from being complicit through aid or assistance begins the moment the State becomes aware of the existence of a serious risk that genocide may be committed. The Order issued by the ICJ on 26 January finding 'a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible'²⁵ means that States are now aware of the risk of genocide being committed in Gaza.

Third States must consider that their military or other assistance to Israel's military operations in Gaza may put them at a risk of being complicit in genocide under the Genocide Convention.²⁶ While the fault threshold for complicity is higher than for prevention, there is a real risk of future litigation, particularly once the ICJ decides on the merits.²⁷ Such future litigation will involve the question of State responsibility under Article 16 of the Articles on State Responsibility, whether continued support to the operation involved sufficient safeguards to avoid violating the rights of the Palestinians under the Genocide Convention. Pursuant to customary international law, as largely codified in Articles on States Responsibility, a State that aids or assists another State in the commission of an internationally wrongful act is responsible for doing so if that State does so with the knowledge of the circumstances of the internationally wrongful act and the act would be internationally wrongful if committed by that State.²⁸ This applies to arms transfers, as well

²¹ ICJ, Case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), [Judgment of 26 February 2007](#) (*Bosnia v Serbia*), para. 419.

²² *Bosnia v Serbia*, para 420 and 432. See also ILC Commentary on Draft Articles on State Responsibility (Article 16, commentary, para 3.5.

²³ *Bosnia v Serbia*, para. 432

²⁴ *Bosnia v Serbia*, para. 432 (emphasis added).

²⁵ *South Africa v Israel*, para 74.

²⁶ See also *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, *Declaration of Judge Tladi*, p. 4, para. 13: " While the Court has not issued any provisional measures at this stage, the current Order makes plain that it expects Germany, and other States supplying weapons to Israel, to exercise due diligence and ensure that weapons transferred to Israel are not used in the commission of acts of genocide or breaches of international humanitarian law. For me this is not a hollow statement but a statement with real legal significance. In particular, in the consideration of the responsibility of Germany, or any other State, for breaches of either the Genocide Convention or international humanitarian law, including responsibility for not taking appropriate measures in the face of a risk of such breaches, the effect of this Order would be to remove any plausible deniability of knowledge of the risk."

²⁷ A link between the act of assistance and the commission of a wrongful act can be established, since it can be assumed that the military supplies delivered by third States are used by the Israeli army in Gaza.

²⁸ Draft Articles on States Responsibility of States for Internationally Wrongful Acts, Article 16.

as to other forms of support that make a significant contribution to the unlawful acts such as logistical, technical or financial support, intelligence, or provision of other equipment.

Claims alleging States' complicity in the commission of genocide are already being filed under national law. For example, on 26 January, the US District Court for the Northern District of California [heard arguments](#) alleging US officials' complicity in genocide against Palestinians in Gaza in violation of the Genocide Convention and US law.²⁹ While the case was dismissed on procedural grounds, in the [decision](#) released on 31 January, Judge Jeffrey White invoked the ICJ Order: the 'undisputed evidence before this Court comports with the finding of the ICJ and indicates that the current treatment of the Palestinians in the Gaza Strip by the Israeli military may plausibly constitute a genocide in violation of international law.'³⁰ The case [alleging genocide](#) was filed on 13 November, indicating that the US was on notice of the risk before the 26 January ICJ order. In December 2023, Biden twice [used an emergency determination](#), avoiding congressional review requirements, to provide more than USD250 million in military equipment to Israel. Such actions might constitute complicity in the commission of genocide by aiding or abetting.³¹

Obligations under Customary International Law

For States not party to the Genocide Convention (e.g. Japan), the prohibition against genocide – as a peremptory norm – entails their customary obligations not to aid and assist in the commission of Genocide, in its preparation or in its attempt (see *mutatis mutandis* aiding and assisting as outlined in complicity above).

Aiding and abetting in International Criminal Law

Aiding and abetting in international criminal law require both the *actus reus* (material element) and the *mens rea* (mental element). The International Criminal Tribunal for the Former Yugoslavia (ICTY) held that the *actus reus* requires 'practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime' while *mens rea* requires the knowledge that these acts assist the commission of the offence'.³² With regard to the concept of accomplice liability for aiding and abetting an international crime the ICTY articulated the intentional participation test in the *Tadic* case as follows: 'The most relevant sources for such a determination are the Nuremburg war crimes trials...First, there is a requirement of intent, which involves awareness of the act of participation coupled with a conscious decision to participate by planning, instigating, ordering, committing, or otherwise aiding and abetting in the commission of a crime. Second, the prosecution must prove that there was participation in that the conduct of the accused contributed to the commission of the illegal act.'³³ The International Criminal Tribunal for Rwanda (ICTR) in the *Akayesu* case concluded: 'anyone who knowing of another's criminal purpose, voluntarily aids him or her in it, can be convicted of complicity even though he regretted the outcome of the offence.'³⁴

²⁹ [Defense for children international Palestine v. Biden](#) case was filed on 13 Nov 2023.

³⁰ [Order Granting Motion to Dismiss and Denying Motion for Preliminary Injunction](#), 31 Jan 2024.

³¹ The United States has however a [reservation](#) to the Genocide Convention, [upheld by the ICJ](#), that mandates that the US must give its consent to be brought before the ICJ on any claims under the Convention.

³² ICTY, *BLAŠKIĆ Tihomir* (IT-95-14-A) [paras 46, 47](#) following the standard set out in *Furundžija*.

³³ ICTY, *Tadic*, 7 May 1997, para 674.

³⁴ ICTR, *Akayesu*, para. 539

Corporations and their managers, directors, or other leaders could be held directly liable for the commission of acts of genocide, as well as war crimes and crimes against humanity. Article VI of the Genocide Convention specifies that 'persons' may be held liable for genocidal acts – which include individual businessmen or corporate managers as natural persons and may include corporations as legal persons. While the International Criminal Court (ICC) does not have jurisdiction over legal entities, company personnel as natural persons of States Parties to the Rome Statute may fall under its jurisdiction. The ICC has [jurisdiction](#) over crimes committed 'in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014'.³⁵ Under Article 25(3)(c) of the Rome Statute, it can prosecute those who facilitate the commission of crimes, including through the provision of means. Many States have incorporated relevant provisions of international criminal law into their domestic criminal laws, allowing for the prosecution of legal and natural persons in national jurisdictions.³⁶ State officials involved in arms exports may be individually criminally liable for aiding and abetting acts of genocide committed by the Israeli government and military.

Obligations under International Humanitarian Law

The prohibition to commit genocide is a *jus cogens* norm from which no party, including corporations, can derogate. In situations of armed conflict, additional international humanitarian and international criminal law standards apply to corporations and individual business leaders, who must consider whether their operations contribute to gross human rights violations or international crimes. International humanitarian law applies during armed conflict, both international and internal, as well as situations of military occupation. Article 42 of the Hague Regulations of 1907 defines occupation as follows: 'territory is considered occupied when it is actually placed under the authority of the hostile army.'³⁷ International humanitarian law covers the entire territory of the countries involved in a conflict - whether combat takes place there or not. The Geneva Conventions of 1949 and their Additional Protocols are at the core of international humanitarian law. The Conventions protect people who are not taking part in the hostilities (civilians, health workers, aid workers) and those who are no longer participating in the hostilities (wounded, sick, prisoners of war).³⁸ The Conventions and their Protocols contain stringent rules to deal with 'grave breaches'. Those responsible for grave breaches must be sought, tried, or extradited, whatever nationality they may hold. The Geneva Conventions have been [ratified by all States](#) and are universally applicable. International humanitarian law binds State and non-State actors, including businesses, as well as individual business leaders whose activities are linked to international crimes during an armed conflict. The UN Guiding Principles on business and human rights (UNGPs) also provide that businesses should respect the standards of international humanitarian law in situations of armed conflict.³⁹

Corporate complicity in genocide

Corporate complicity implies that corporations may be 'aiding' or 'abetting' genocidal acts perpetrated by the State. International criminal law suggests that direct complicity requires

³⁵ ICC, [State of Palestine](#).

³⁶ Ramasastry, Thompson and Taylor, 'Commerce, Crime and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law', Fafo report No. 536 (Fafo, 2006).

³⁷ Hague Convention respecting the Laws and Customs of War on Land of 1907, art. 42.

³⁸ ICRC, [The Geneva Conventions and their Commentaries](#).

³⁹ [UN Guiding Principles on business and human rights](#) (UNGPs), 2011, principle 7.

intentional participation, but not necessarily an intention to do harm, only knowledge of foreseeable harmful effects. A corporation or individual businessperson that knowingly assists a State in violating the customary international law principles, including the prohibition to commit genocide, may be complicit in such a violation. It is not required that the corporate accomplice desires that the principal offence be committed. As such, a corporation or corporate leader may be complicit in the commission of genocide where it decides to participate through assistance in the commission of the acts by the State of Israel and that assistance contributes to the commission of genocide. The corporate accomplice can be liable for contributing to genocidal acts even if the State of Israel, as primary perpetrator, is not found responsible. Nor need the corporate actor wish the results, it is enough if the corporation or its agents knew of the likely effects of their assistance and if such support has a 'substantial effect' on the commission of the crime of genocide.⁴⁰

Companies investing in or partnering with the Israeli government or Israeli State-owned enterprises face a particularly salient risk of aiding, abetting, facilitating, or otherwise contributing to Israel's commission of genocide or other violations of international humanitarian law. Business activities may be considered directly linked to the commission of a crime during an armed conflict if they provide direct support – for example, military, logistical, intelligence or financial assistance – even if they do not participate in the actual fighting and even if the business did not intend to support a party to the conflict.⁴¹

Direct support can translate into international criminal responsibility for the individual economic actors concerned who may be accused of the direct commission of international crimes.⁴² Criminal prosecutions have been brought against companies and their directors before national courts for international crimes under laws transposing principles of the Genocide Convention into national laws.⁴³ For example, Frans van Anraat, a Dutch businessman, was accused of complicity in war crimes and genocide for having sold chemicals used in the fabrication of mustard gas to the Iraqi government under Saddam Hussein's rule, which was used in the massacres of Kurdish minorities.⁴⁴ In 2007, the Appeals Court of The Hague found van Anraat guilty for aiding and abetting war crimes and sentenced him to 17 years in prison.⁴⁵ The court found that he was aware that his product could be used for producing poison gas and that there was a reasonable chance it would be used for chemical attacks. The court found that Van Anraat 'consciously and solely acting in pursuit of gain, has made an essential contribution to the chemical warfare program of Iraq...which enabled, or at least facilitated, a great number of

⁴⁰ See Clapham and Jerbi, [Categories of Corporate Complicity in Human Rights Abuses](#), 2001.

⁴¹ Report of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, [Business, human rights and conflict-affected regions: towards heightened action](#), July 2020, para 10.

⁴² Clapham, 'Human rights obligations of non-State actors in conflict situations', *International Review of the Red Cross*, vol. 88, No. 863, 2006.

⁴³ International Commission of Jurists, *Corporate Complicity in International Crime* (n 2), vol II, 53, Huisman and van Sliedregt, 'Rogue Traders: Dutch Businessmen, International Crimes and Corporate Complicity' (2010) 8 *J Intl Criminal Justice* 803, Vest, 'Business leaders and the modes of individual criminal responsibility under intl law' (2010) 8 *J Intl Criminal Justice*, 851.

⁴⁴ District Court of The Hague, 23 December 2005, Case No. AX6406 [*van Anraat case*].

⁴⁵ See also, M Zwanenburg and G den Dekker, 'Prosecutor v. Frans van Anraat, case No. 07/10742' (2011) 104 *AJIL* 86; R van Rossum, 'Adjudication of Intl. Crime in the Netherlands' (2011) 39 *Intl J Legal Information* 202; Huisman and van Sliedregt (n 61), 805, 807.

attacks with mustard gas on defenceless civilians'.⁴⁶ The Dutch Supreme Court upheld Van Anraat's conviction for being an accessory to war crimes.⁴⁷ It found that the accused knew that the chemicals he was supplying to the Hussein regime were being used for the production of poisonous gas and that Van Anraat's conduct constituted 'deliberate contribution' to the offences.⁴⁸ He was, however, acquitted from the charges of complicity in genocide because there was insufficient evidence that he had known of the Iraqi regime's genocide intent towards the Kurdish minorities.⁴⁹

Corporate complicity in Gaza

Arms, weapons, ammunition, vehicles, and other military supplies, including technology and fuel, are essential for the activities of the Israeli air force, ground forces, and navy and are making an essential contribution to the violations on international humanitarian law in Gaza and genocidal acts against the Palestinians. Dozens of companies domiciled in Third States (especially in the US and Germany) are currently [providing Israel with weapons and other military equipment](#) used in its military operations in Gaza that amount to genocide, war crimes, and other violations of international human rights law. They are doing so knowing that their supplies are used in the war in Gaza. These companies and their staff risk to be charged with complicity in genocide and other international crimes in their home States.⁵⁰

For example, Caterpillar, an American construction, mining and engineering manufacturer, [is supplying Israel with the D9 armoured bulldozers](#), crucial for Israel's ground invasion of Gaza and the destruction of Palestinian civilian buildings and other facilities [alongside the Gaza Strip border](#).⁵¹ In February, the [UN High Commissioner for Human Rights](#) Volker Türk denounced the Israeli army's destruction of all buildings within one kilometre of the Israel-Gaza border to create a 'buffer zone' as non-consistent 'with the narrow "military operations" exception set out in international humanitarian law' and added that 'extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, amounts to a grave breach of the Fourth Geneva Convention and a war crime.' Boeing, an American airplane manufacturer, [makes F-15 fighter jets and Apache AH-64 attack helicopters](#) used by the Israeli forces, as well as multiple types of unguided small diameter bombs and joint direct attack munition (JDAM) kits that have been used extensively in Gaza [including in a bombing of Jabalia refugee camp](#). Rheinmetall, Germany's largest weapons manufacturer, [has provided Israel](#) with 10,000 rounds of 120mm precision tank ammunition. French company Eurolinks is [accused](#) of selling Israel components for ammunition used in Gaza. Japanese company FANUC's robots are essential for

⁴⁶ *van Anraat* case, para 17.

⁴⁷ *van Anraat* case, Dutch Supreme Court, 30 June 2009, Case No. BG4822.

⁴⁸ Court of Appeal of The Hague, 9 May 2007, Case No. BA6734, para 12.5.

⁴⁹ *Ibid.*, para. 17. See also, van der Wilt, 'Genocide v. War Crimes in the Van Anraat appeal' (2008) 6 J Intl Criminal Justice 557, 558-559; New York Times, 'Vendor Tied to Gas Attack Is Convicted' 24 December 2005, A5.

⁵⁰ In relation to corporate criminal liability, corporations would be liable for their involvement only where domestic law provides for liability of legal entities for international crimes.

⁵¹ Caterpillar has been involved in human rights violations in Palestine for decades, especially in relation to home demolitions and forced evictions in the West Bank and East Jerusalem, see for example, Amnesty International, [Caterpillar Inc's Role in Human Rights Violations in the Occupied Palestinian Territories](#). Also see, [UNOSAT](#), 'Statistical analysis shows the rapid increase in damaged and destroyed buildings within the zone, from 15% to 90% between October 2023 and February 2024.'

making 155mm artillery shells, Hellfire missiles and F35 parts used by the Israeli military. Japanese company FANUC [has been accused](#) to supply industrial robots used in Israeli arms production.

Major oil companies domiciled in Third States, including BP, Chevron, ExxonMobil, Shell, Eni, and TotalEnergies, [are supplying Israel with fuel](#) either through their ownership stakes or operations. Israel relies on crude oil and refined products from overseas to run its large fleet of fighter jets, tanks, and other military vehicles. This fuel supply chain appears to have relied heavily on fossil fuels from Azerbaijan, Kazakhstan, Russia, Brazil, Gabon, and the US. For example, Israel has received three US tankers of JP8 jet fuel in the form of military aid since October 2023. Valero, an American energy company, [has been a long-time and key supplier of military jet fuel](#) (known as 'JP-8') to Israel under contracts with the US government. The JP-8 supplied by Valero [is shipped from the US to Israel](#) by vessels belonging to Overseas Shipholding Group, a, American shipping company contracted directly by the Israeli government. Companies supplying jet fuel and oil to Israel may be considered to be providing material support to the military, aware of its foreseeable harmful effects, and therefore risk complicity in war crimes, genocide, and other crimes under international law. 'The countries and companies that have continued to supply oil to the Israeli military since the decision of the international court of justice are contributing to horrible human rights violations and may be complicit in genocide,' [said David Boyd, the UN special rapporteur on human rights and the environment](#).

The Israeli army [uses technology, including Artificial Intelligence \(AI\) systems](#), to identify targets for military attacks, and has been carrying out near-automated bombing campaigns in areas densely populated by civilians. For example, the Israeli army has developed a system largely built on AI called '[Habsora](#)' ('[The Gospel](#)') that can 'generate targets almost automatically at a rate that far exceeds what was previously possible' and is used in the large scale targeting of civilian buildings. Another AI-based programme known as '[Lavender](#)' identifies people to be put on a 'kill list' and has played a central role in the widespread killing of civilians. Yet another system, '[Where's Daddy](#)', alerts the Israeli army when Palestinians on a 'kill list' enter their family homes, at which point they and their homes can be bombed. Some of the companies providing these tools are Israeli, but companies domiciled in Third States are also involved. Palantir Technologies, an American data analytics company specialised in defence and intelligence services, is providing AI-powered tools to the Israeli Ministry of Defence [to help in the war effort](#). The Israeli army military intelligence unit has also developed an expansive facial recognition programme being used in Gaza, which [relies on technology from Corsight](#), an Israeli company, but also uses Google Photos. Google has provided technology capable of being used for surveillance and military target identification to the Israeli Ministry of Defence, and [signed a new contract](#) in March 2024, for 'consulting assistance' to expand Google Cloud access, seeking 'to allow multiple units to access automation technologies'. AI and cloud services provided by Google and Amazon to the Israeli government under the large technology [project 'Nimbus'](#) risk being used by the Israeli military in its operations, including in the potential commission of genocidal acts.⁵² The above are non-exhaustive examples of a variety of companies involved in supplying

⁵² Google Cloud Platform has been [developing](#) cloud infrastructure for the Israeli government under Project Nimbus, one of the largest technology projects in Israel's history. Alongside [Amazon Web Services](#), which is also part of the project, Google's cloud computing services will eventually be used by all branches and units of the Israeli government, including its military, security agency ('Shin Bet'), police, prison service, land and water authorities

Israel with weapons, technology and fuel used by the Israeli military in Gaza. As [detailed below](#) they should be required to stop any further transaction as part of an arms embargo.

Financing genocide in Gaza

Banks and other financial institutions that finance companies selling arms or other military supplies to the Israeli military or that provide funds directly to the Israeli State may contribute to the commission of genocide and violations of international humanitarian law in the OPT, namely Gaza. Some activities, such as the purchase of Israeli government bonds, which the Israeli State [has relied on and encouraged](#) to finance its war on Gaza can make banks and other financial institutions complicit in genocide. In finding responsibility for failing to prevent genocide in the *Bosnia v Serbia* case, the ICJ found that the Federal Republic of Yugoslavia was able to influence the perpetrators of the Srebrenica genocide 'owing to the strength of the political, military and *financial links*'.⁵³ Since the Nuremberg trials, the notion of accomplice liability in international criminal law has developed considerably and the role of corporate financing of human rights violations, including genocide, has been increasingly denounced.⁵⁴ For example, in 2017 a criminal lawsuit [was filed](#) against BNP Paribas, a French bank, alleging the bank's complicity in the Rwanda genocide.⁵⁵ The complaint claims that *BNP* transferred USD1.3 million from the Rwandan national bank to a Swiss account belonging to a South African arms dealer in June 1994, a month after the UN had implemented an arms embargo. According to the complaint, the alleged transfer of funds allowed for 80 tonnes of weapons to be sold to Hutu colonel Théoneste Bagosora, a key player in the genocide. The ICTR found him guilty of genocide and other crimes in 2008.⁵⁶

Investors may bear accomplice or contribution liability for international crimes committed using funds they have provided. The challenge in specific cases is to determine when neutral business activities, such as providing goods or financial resources, have turned into legally relevant behaviour, and thus become an act of complicity to a crime. In the context of financing, there is a need for analysis of the *actus reus* and causation elements of complicity liability. The international standard defining the *actus reus* of liability in international law is that of 'practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime'.⁵⁷ The assistance 'need not constitute an indispensable element, that is, a *conditio sine qua non* for the acts of the principal'.⁵⁸ Instead, it is sufficient that the acts of the accomplice make a substantial effect to the commission of the criminal act by the principal. To distinguish corporate complicity in international crimes from neutral business activity, liability of a financier will depend on what it knows about how its services and loans will be utilised and the degree to which these services actually affect the commission of a crime.⁵⁹ This distinction becomes

⁵³ *Bosnia v Serbia*, para. 434 (emphasis added).

⁵⁴ eg *Burnett v. Al Baraka Inv. & Dev. Corp.*, 274 F. Supp. 2d 86 (D.D.C. 2003). See also, Scott, 'Taking Riggs Seriously: The ATCA Case Against a Corporate Abettor of Pinochet Atrocities' (2005) 89 Minn L Rev 1497, 1533-34.

⁵⁵ Sherpa, [BNP Paribas case in Rwanda](#).

⁵⁶ ICTR, *The Prosecutor v. Bagosora et al.*, 18 December 2008, Case no. ICTR-98-41-T, para 2266, part 3.1, 571.

⁵⁷ *Prosecutor v Furundzija* (Case No: IT-95-17/1-T), 235. See Report of the International Law Commission, Article 2(3)(d) of Draft Code of Crimes against the Peace and Security of Mankind, U.N. GAOR, 48th Sess., Supp. No. 10, U.N. Doc. A/51/10 (1996), Cassel, 'Corporate Aiding and Abetting of Human Rights Violations: Confusion in the Courts' (2008) 6 Northwestern Univ J Intl Human Rights 304, 16.

⁵⁸ *Prosecutor v Furundzija* (Case No: IT-95-17/1-T), 209.

⁵⁹ International Commission of Jurists, *Corporate Complicity in International Crime* (n 2), Vol I, 9, 39-40

relevant when companies facilitate State-sponsored international crimes by providing the means to commit these violations, which is currently the case of companies financing the State of Israel.

A 2016 [report](#) by the European Council on Foreign Relations on differentiation between business with Israel and its illegal settlement enterprise in the OPT, contained the following crucial point about the fungibility of monetary funds: 'While it is indeed difficult to get a complete picture of Europe's financial contributions to the settlement project – both direct and indirect – it is possible to get a limited snapshot...private entities and public bodies in Europe have invested over €500 million in eight Israeli banks...Given the fungibility of the financial capital employed by these corporate entities and the fact that Israeli banks play a key role in maintaining and promoting Israeli settlement activities, there is a real risk that European investments facilitate illegal Israeli activities in contravention of international law.'

Incitement to genocide

In addition to the commission of genocide, international law criminalises direct and public incitement to commit genocide as listed in Article 25 of the Rome Statute.⁶⁰ International criminal tribunals have prosecuted and convicted corporate officials of media outlets who incited genocide. Key cases are the ones at the ICTR involving Radio Télévision Libre des Mille Collines.⁶¹ The station broadcasted from July 1993 to July 1994 and it was determined by the Tribunal that its propaganda and vindictive speech incited the Rwandan genocide. In 2003, prosecutors of the ICTR sought life sentences against Ferdinand Nahimana, a director of the radio, and Jean Bosco Barayagwiza, associated with the station. The ICTR also prosecuted Hassan Ngeze, the founder and director of *Kangura* newspaper, known for spreading anti-Tutsi propaganda. The court consolidated the indictment of the three men into a single trial, known as the *Media Case*. This trial was the first time since Nuremberg that the role of the media was examined as a component of international criminal law. Nahimana, Barayagwiza and Ngeze were convicted on counts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and crimes against humanity. Nahimana and Ngeze were sentenced to life imprisonment and Barayagwiza to 35 years. Upon appeal, in 2007, Nahimana and Ngeze's sentences were reduced to 30 and 35 years respectively. Later, in 2009, Valeria Berneriki, a broadcaster, was also [found guilty of incitement to genocide](#) by a *gacaca* court (traditional community justice courts of Rwanda, revived in 2001), and sentenced to life imprisonment.

Social media platforms such as TikTok, X (formerly Twitter), Meta (formerly Facebook, which also owns Instagram and WhatsApp), and Telegram [are being used](#) by Israeli military personnel and government officials to spread content which can amount to incitement to genocide, including genocidal rhetoric, dehumanisation speech, and incitement to violence. Social media companies and their employees risk international criminal liability when they provide a platform to the perpetrators of direct and public incitement to commit genocide.⁶² To the extent that these

⁶⁰ Because the Rome Statute lists incitement in Article 25 'Individual criminal responsibility' and not in Article 5 entitled "Crimes within the jurisdiction of the Court," doubts have been raised as to whether incitement is a crime (a substantive offense independent from genocide) or a mode of liability (a means by which liability for genocide attaches).

⁶¹ ICTR, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze* (2003).

⁶² See, Hakim, '[How social media companies could be complicit in genocide](#)', Chicago Journal of International Law

platforms host such content and fail to prevent its publication or remove it, companies and their leaders risk being complicit in incitement of genocide. For example, in 2017 the Myanmar military, known as the Tatmadaw, launched a 'clearance operations' in Rakhine state, an all-out assault on thousands of Rohingya civilians. A UN Fact-Finding Mission concluded that there was 'sufficient information to warrant the investigation and prosecution' of senior Tatmadaw officials for genocide.⁶³ The investigation revealed that for years Facebook provided senior Tatmadaw officials with a platform to propagate a disinformation campaign to fuel nationwide majoritarian hatred toward the Rohingya. The UN identified Facebook's role as 'significant,' noting that the platform 'has been a useful instrument for those seeking to spread hate' and that Facebook's response was 'slow and ineffective'.⁶⁴ Israeli media and TV channels (including Israeli public broadcaster Kan),⁶⁵ and other international news stations have regularly given space to Israeli military and government officials. For example, CNN, a US news channel, [is facing a backlash](#) from its own staff over editorial policies they say have led to a regurgitation of Israeli propaganda and the censoring of Palestinian perspectives in the network's coverage of the war in Gaza. Print media, including influential outlets like the New York Times and BBC, [are also playing a role](#) in the justification of Israel's military operations through editorial decisions about what to cover and which words to use.

Tacit complicity

Companies also risk complicity in the Israeli government's violations even just by carrying out their business activities in the country and contributing to the wider economy. For example, by paying taxes to a government that is committing genocide, among other international crimes and grave breaches. Silent complicity is apparent when the company is not directly complicit in genocide, or directly benefit from it, but is aware of genocide being committed and fails to distance itself from it. Legal scholars have emphasized that silence is not neutrality but an expression of moral support.⁶⁶ These degrees and forms of business complicity in genocide can be established based on the notion of proximity to the violator (perpetrator), the violated (victims), and the violation (event).⁶⁷ Proximity, in turn, is closely related to the knowledge and foreseeability that companies had of the genocidal events going on, which can be assumed to depend on the geographical closeness to the event and the frequency and duration of the company's contact with the perpetrator.⁶⁸ Companies risk being complicit even if they had not directly participated in the event or benefited from it; the mere knowledge that the crime was

⁶³ Human Rights Council, Report of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/64, 12 Sept 2018.

⁶⁴ Report of the Independent International Fact-Finding Mission on Myanmar, para 74.

⁶⁵ Kan is a member of the European Broadcasting Union.

⁶⁶ Clapham and Jerbi (2001). Categories of corporate complicity in human rights abuses. *Hastings International and Comparative Law Review*, 24, p 347. Bohoslavsky, and Opgenhaffen, (2010). The past and present of corporate complicity: Financing the argentinean dictatorship. *Harvard Human Rights Journal*, 23(1), p.171. Wettstein (2010). The duty to protect: Corporate complicity, political responsibility, and human rights advocacy. *Journal of Business Ethics*, 96(1), p 40. Jacobson, (2005). Doing business with the devil: The challenges of prosecuting corporate officials whose business transactions facilitate war crimes and crimes against humanity. *Air Force Law Review*, 56(1).

⁶⁷ Tripathi, (2010). Business in armed conflict zones: How to avoid complicity and comply with international standards. *Politorbis*, 50(3).

⁶⁸ Huisman and van Sliedregt (2010). Rogue traders: Dutch businessmen, international crimes and corporate complicity. *Journal of International Criminal Justice*, 8(3), p 819.

going on may generate complicity – assuming there is still a close link with the event, for example a company that carries out business in Israel and pays taxes to the Israeli government. An example is Intel, an American tech company and one of the [largest employers in Israel's high tech industry](#), which is committed to support the Israel economy. In December 2023, Intel [announced plans](#) to build a USD 25 billion chipmaking factory in Israel.

The notion of tacit or silent complicity was discussed by the ICTY in the [Furundžija judgement](#).⁶⁹ The Tribunal suggested in this case that presence may be enough to constitute participation in certain circumstances: 'It may be inferred from this case [the Synagogue case] that an approving spectator who is held in such respect by the other perpetrators that his presence encourages them in their conduct, may be guilty of complicity in a crime against humanity.'⁷⁰ Indeed, it reflects the growing acceptance that there is something culpable about failing to exercise influence in such circumstances.

After the end of apartheid in South Africa, in 1997 the [Truth and Reconciliation Commission](#) found that the business sector had been 'central to the economy that had maintained the South African state during the apartheid years'.⁷¹ The Commission found that some sectors of business were more involved with the apartheid regime than others (e.g., the military industry and financial institutions), but that most businesses were culpable by virtue of having benefited from operating in a racially structured environment. The Commission concluded: 'The degree to which business maintained the status quo varied from direct involvement in shaping government policies or engaging in activities directly associated with repressive functions to simply benefiting from operating in a racially structured society in which wages were low and workers were denied basic democratic rights.'⁷²

2. Obligation to Prevent Genocide

Due to the *ius cogens* character of the prohibition to commit genocide, the obligation to prevent genocide is owed by all State Parties *erga omnes* through positive conduct and is violated also by omission, as outlined by the ICJ in the 2007 [Bosnia v Serbia](#) judgment.⁷³ The obligation to prevent covers the acts referred to in Article II and III of the Genocide Convention. In 2020, in [The Gambia v. Myanmar](#) case, the ICJ confirmed the extraterritorial applicability of these obligations and that States Parties to the Genocide Convention have a 'common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity.'⁷⁴ The obligation to prevent genocide is an obligation of conduct and the ICJ clarified

⁶⁹ ICTY, [Furundžija \(IT-95-17/1\)](#), 10 December 1998.

⁷⁰ para 207.

⁷¹ [Truth and Reconciliation Commission of South Africa Report](#), 1998 Vol 6, Sect 2, Ch 5, 'Reparations and the Business Sector', 58, 140; Vol 4, Ch. 2, 58, 161.

⁷² *Ibid.*, Vol 6, Sect 2, 140.

⁷³ *Bosnia v Serbia*, para 432.

⁷⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Request for the Indication of Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 17, para. 41.

in the *Bosnia v Serbia* case that responsibility is incurred if 'the State manifestly failed to take all measures to prevent genocide which were within its power'.⁷⁵

Duty to act from the moment of knowledge of serious risk

The obligation to prevent genocide and the corresponding duty to act start, as the ICJ clarified in the *Bosnia v Serbia* case, 'at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit'.⁷⁶ For the obligation to prevent to arise it is necessary i) that the situation amounts to a 'serious risk', and ii) that the State knows or should have known about that situation. The 'serious risk' of the commission of genocide criteria is triggered by the 'plausibility' criteria of commission of genocide required for the indication of provisional measures in *South Africa v Israel*. The ICJ's finding of 'plausible rights' and 'imminent risk' trigger third States' legal obligations under the Genocide Convention as those findings establish the risk of genocide, and concomitantly, third States' knowledge thereof.⁷⁷ Such a reading is supported by the [declaration](#) of Judge Nolte, who voted in favour of the ICJ's 26 January Order explaining that 'certain statements by Israeli officials...give rise to a real and imminent risk of irreparable prejudice' and 'may contribute to a "serious risk" that acts of genocide other than direct and public incitement may be committed';⁷⁸ and by the [Declaration](#) of Judge Yusuf, who voted in favour of the ICJ's 28 March Order, explaining that "the alarm has now been sounded by the Court. All the indicators of genocidal activities are flashing red in Gaza. An injunction has been served for ending the atrocities". Third States need to consider that the real and imminent risk established by the ICJ Order may solidify the case that the threshold of 'serious risk' is now met and as such must take immediate actions to prevent the genocide of Palestinians in Gaza, independently of the ICJ's final decision on the merits. The ICJ Order of 26 January constitutes knowledge of the risk and triggers the obligation to prevent. The two subsequent orders of 28 March and 24 May give further effect to the knowledge of foreseeable harm requirement with respect to complicity. In both orders the Court found that the current situation 'entails a further risk of irreparable prejudice to the plausible rights [i.e. the right of the Palestinians in Gaza to be protected from genocide] claimed by South Africa and that there is urgency, in the sense that there exists a real and imminent risk that such prejudice will be caused before the Court gives its final decision'.⁷⁹

⁷⁵ *Bosnia v Serbia*, para 431.

⁷⁶ *Bosnia v Serbia*, para 431.

⁷⁷ Arguably third States should have learned about a serious risk of genocide when a group of UN experts warned of a 'genocide in the making' already on 16 November 2023 but there is definitive knowledge with the ICJ Order. For comments on the 'serious risk' threshold that triggers the duty to prevent under the Genocide Convention, and the 'real and imminent risk' threshold that must be met for provisional measures to be indicated under Article 41 of the ICJ Statute see Tamimi, '[Implications of the ICJ Order \(South Africa v Israel\) for Third States](#)', EJIL, Feb 2024.

⁷⁸ [Judge Nolte](#), para 15.

⁷⁹ [Order of 28 March](#), para 40 and [Order of 24 May](#), para 47.

Effort requirement

States are bound to perform their obligations under international law in good faith.⁸⁰ In *Bosnia v Serbia*, the ICJ explained that the duty to prevent requires States 'to employ all means reasonably available to them' to prevent genocide.⁸¹ This obligation is one of conduct and not of result, meaning that it is not about whether the State achieves the result of preventing genocide, but whether it took all measures which were within its power and which might have contributed to preventing the genocide. States' obligation to prevent genocide is not a passive obligation, but implies the notion of 'due diligence', which requires an assessment based on facts.⁸² States are required to carry out regular and ongoing assessments of the situation in Gaza based on the information available. The evaluation requirement under the Genocide Convention will now have to factor in the duty of States 'to employ all means reasonably available to them' to prevent genocide.

Obligation to ensure respect by others under International Humanitarian Law

All States must ensure respect for international humanitarian law by parties to an armed conflict, as required by 1949 Geneva Conventions and customary international law. The duty to 'ensure respect' for humanitarian law applies 'in all circumstances'⁸³, including when Israel claims it is defending itself.⁸⁴ The obligation 'to ensure respect' flowing from common Article 1 of the [Geneva Conventions of 1949](#) also has an external dimension related to ensuring respect for the Conventions by others that are Party to a conflict. Accordingly, States, whether neutral, allied or enemy, must do everything reasonably in their power to ensure respect for the Conventions by others that are Party to a conflict.⁸⁵ This duty to ensure respect by others comprises both a positive and a negative obligation. Under the positive obligation, States must do everything reasonably in their power to prevent and bring such violations to an end, in particular by using their influence on a State Party to a conflict.⁸⁶ The duty to ensure respect for the Geneva Conventions is particularly strong in the case of a partner in a joint operation, even more so as this case is closely related to the negative duty neither to encourage nor to aid or assist in violations of the Conventions.⁸⁷ The fact, for example, that a State Party participates in the financing, equipping, arming (including providing military intelligence) or training of the armed

⁸⁰ Vienna Convention on the Law of Treaties, 1969, article 26; Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, ICJ Reports 2022, 211, para 56 (with specific reference to article I of the Genocide Convention).

⁸¹ *Bosnia v Serbia*, para. 430.

⁸² *Bosnia v Serbia*, para 430. See also International Commission of Jurists, '[Gaza/Palestine: States have a Duty to Prevent Genocide](#)', 17 November 2023.

⁸³ Common Article 1 Geneva Convention, see [International Committee for the Red Cross \(ICRC\), Article 1 Respect for the Convention](#), para 186.

⁸⁴ Note that in a 2004 ruling on the [Legal Consequences of the Construction of a Wall In the Occupied Palestinian Territory](#), the ICJ found that 'Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State. The Court also notes that Israel exercises control in the Occupied Palestinian Territory and that, as Israel itself states, the threat which it regards as justifying the construction of the wall originates within, and not outside, that territory. The situation is thus different from that contemplated by Security Council resolutions 1368 (2001) and 1373 (2001), and therefore Israel could not in any event invoke those resolutions in support of its claim to be exercising a right of self-defence. Consequently, the Court concludes that Article 51 of the Charter has no relevance in this case.'

⁸⁵ ICRC, Article 1 Respect for the Convention, para 186.

⁸⁶ ICRC, Article 1 Respect for the Convention, para 197.

⁸⁷ ICRC, Article 1 Respect for the Convention, para 200

forces of a Party to a conflict places it in a unique position to influence the behaviour of those forces, and thus to ensure respect for the Conventions. Under the negative obligation, States Parties may neither encourage, nor aid or assist in violations of the Conventions by Parties to a conflict.⁸⁸ Financial, material, or other support in the knowledge that such support will be used to commit violations of humanitarian law would violate common Article 1, even though it may not amount to aiding or assisting in the commission of a wrongful act by the receiving States for the purposes of State responsibility.⁸⁹ An illustration of a negative obligation in the context of arms transfers is [elaborated on below](#).

Capacity to influence

The Genocide Convention imposes a minimum legal obligation on States to each take reasonable action to contribute toward preventing genocide, a duty that extends extraterritorially and applies regardless of whether any one State's actions alone are sufficient to prevent genocide. In the *Bosnia v Serbia* case, the ICJ clarified that, 'if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit'.⁹⁰ The Court held that in determining whether a State has discharged its obligations to prevent genocide, its 'capacity to influence effectively the action of persons likely to commit, or already committing, genocide' must be considered.⁹¹ This capacity 'itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events'.⁹² A State can be held responsible when it fails to implement all lawful means under its authority.

There is heightened responsibility for Third States that have the capacity to influence the State committing genocide. In finding responsibility for failing to prevent genocide in the *Bosnia v Serbia* case, the ICJ found that the Federal Republic of Yugoslavia was able to influence the perpetrators of the Srebrenica genocide 'owing to the strength of the political, military and financial links'.⁹³ While the issuance of provisional measures by the ICJ triggers all Third State's duty to prevent genocide, there is a greater responsibility for States that have strong political ties with Israel and provide financial aid and weapons – for example the US, the UK, and

⁸⁸ Under general international law States are responsible for knowingly aiding or assisting another State in the commission of an internationally wrongful act. Draft Articles on State Responsibility (2001), Article 16. According to the International Law Commission, this requires that 'the relevant State organ intended, by the aid or assistance given, to facilitate the occurrence of the wrongful conduct'. Draft Articles on State Responsibility (2001), commentary on Article 16, para. 5. The subjective element of 'intent' is unnecessary, however, for the purposes of common Article 1, which does not tolerate that a State would knowingly contribute to violations of the Conventions by a Party to a conflict, whatever its intentions may be. ICRC, Article 1 Respect for the Convention, para 192 The obligation to ensure respect for the Conventions is a primary obligation that imposes more stringent conditions than those required for the secondary rules on State responsibility for aiding or assisting. It concerns aid or assistance to violations of rules whose observance the States Parties have undertaken to respect and ensure respect for. ICRC, Article 1 Respect for the Convention, para 193.

⁸⁹ ICRC, Article 1 Respect for the Convention, para 193.

⁹⁰ *Bosnia v Serbia*, para 431.

⁹¹ *Bosnia v Serbia*, para 430.

⁹² *Bosnia v Serbia*, para 430.

⁹³ *Bosnia v Serbia*, para. 434 (emphasis added), links also discussed in paras. 240, 241.

Germany. Those States have the 'capacity to influence effectively the action of the relevant persons likely to commit or already committing genocide'⁹⁴ and are thus required to take immediate active steps towards prevention.

The US, Israel's largest military partner, is the country with the most capacity to influence. The US provides Israel with fundamental military support and funding, and exercises its veto power in the UN Security Council as well as its political power in the international arena to protect the actions of the Israeli government from accountability. Israel is the [largest cumulative recipient](#) of US military funding since World War II, amounting to over USD 124 billion.⁹⁵ US aid to Israel is outlined in a unique 10-year memorandum of understanding that pledges the United States will provide billions of dollars of military funding per year, years in advance. The most recent [MOU](#) was [signed in 2016](#) and pledged USD38 billion through 2028. While the MOU is not legally binding, the US Congress has consistently endorsed and abided by the arrangements, including through affirming [legislation](#).

The strength of the various links a Third State has to Israel needs to be assessed to determine its capacity to influence. This strength can include the duration and importance of economic and trade links – the stronger the link the stronger the actions needed to discharge the obligation to prevent. The concepts of 'due diligence' and 'capacity to influence' demand that Third States make concrete assessments about the provision of military, financial and other assistance and how such assistance is employed by Israeli forces in Gaza and facilitates or enables Israel's conduct in Gaza, as well as the use of veto power at the UN to prevent censure and punitive measures, and consider the following actions to fulfil their obligations to prevent, not to be complicit in, and punish genocide.

Recommended Actions by Third States and Corporations in relation to the situation in Gaza

Following the ICJ Order of 26 January – and subsequent orders of 28 March and 24 May - and based on their obligations under the Genocide Convention and international humanitarian law, Third States need to take immediate actions to ensure that their economic relationship with Israel and the activities of corporations domiciled in their territories do not breach their duty to prevent and to not be complicit in genocide, and in order to ensure they are not complicit in or do not aid and assist in Israel's commission of war crimes. Corporations also have such responsibility independently from their Home States' regulation. These actions include: an arms embargo - covering export, import and transit (including the use of territorial air space and territorial waters), including fuel and technology used for military purposes-; economic sanctions and suspension of trade relations, including public procurement and investment; accountability for businesses contributing to genocide; and heightened human rights due diligence obligations.

⁹⁴ *Bosnia v Serbia*, para 431.

⁹⁵ Close to USD 300 billion [when adjusted to today's prices](#).

1. Arms embargo

Under International law, an embargo is a specific practice that falls into the broader category of international sanctions that can be enacted individually or collectively against a country and by UN Member States. It is meant to sanction an international wrongful act of behaviour from one State. Collective embargoes are generally decided by the UN Security Council (UNSC), acting under Chapter 7 of the [UN Charter](#), when faced with threats to international peace and security, breaches of the peace, and acts of aggression.⁹⁶ Regional intergovernmental organizations can also impose embargoes and individual States can impose embargoes and sanctions on another State on a bilateral basis. Embargoes refer to complete or partial interruption of economic relations and communications, which can be applied to all means of transportation and to any category of products, in particular, weapons, energy, or other strategic products. Exports from the targeted State toward the one imposing the embargo are also blocked.

Selling and exporting arms, weapons, military technology, and fuel

The most obvious action to fulfil their duty to prevent genocide by Third States is stopping the provision of weapons to Israel - which, where States knew of the intent to commit genocide, and genocide is found to have been committed, can also make them complicit in genocide.⁹⁷ Third States should impose an arms embargo, ceasing the sale, transfer and diversion of arms, munitions and other military equipment to Israel and refrain from the export, sale or transfer of jet fuel, surveillance and technologies and less-lethal weapons, including 'dual-use' items' where there's reason to suspect their use in the commission of genocide.⁹⁸

The ICJ's order makes halting arms exports to Israel an immediate legal obligation. The ICJ recognised the plausibility of at least some of the rights protected under the Genocide Convention, including the right of the Palestinians in Gaza to be protected from genocide, and the real and imminent risk of irreparable prejudice to these rights. International law, including the Genocide Convention as affirmed by the ICJ, requires that States act the moment they learn about the existence of a serious risk of genocide. The finding of a real and imminent risk of irreparable harm provides definitive knowledge for Third States. This impacts how States should assess the risks related to assisting Israel. The ICJ's conclusion has placed Third States on notice that weapons might be used in the commission of genocide and that the suspension of their provision is thus a 'means likely to deter' or 'a measure to prevent' genocide. The provision of military assistance and material to Israel may render Third States complicit in genocide as well as serious breaches of international humanitarian law. For example, Nicaragua has instituted proceedings before the ICJ against Germany for failing to prevent violations of the Genocide Convention stating 'Germany has provided political, financial and military support to Israel fully

⁹⁶ Article 41 of UN Charter.

⁹⁷ The complicity standard is higher than the duty to prevent standard. Technically, States could fail to observe their duty to prevent obligations under the Genocide Convention without failing to comply with their obligation not to be complicit.

⁹⁸ As also called in a draft resolution to the Human Rights Council, Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice, 26 March 2024, A/HRC/55/L.30, para 13.

aware at the time of authorization that the military equipment would be used in the commission of great breaches of international law by this State and in disregard of its own obligations'.⁹⁹

In February, [UN experts warned](#) that 'any transfer of weapons or ammunition to Israel that would be used in Gaza is likely to violate international humanitarian law and must cease immediately'. In March, the Special Rapporteur on the occupied Palestinian territory, Francesca Albanese recommended in a [report](#) to the UN Human Rights Council that Member States 'Immediately implement an arms embargo on Israel, as it appears to have failed to comply with the binding measures ordered by the ICJ on 26 January 2024'.¹⁰⁰ In April 2024, the UN Human Rights Council adopted by consensus a resolution calling upon all States to cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel.

Common Article 1 of the Geneva Conventions requires States Parties to refrain from transferring weapons if there is an expectation, based on facts or knowledge of past patterns, that such weapons would be used to violate the Conventions.¹⁰¹ This would require an appropriate assessment prior to any arms transfer, as well as transfer of surveillance, intelligence, and AI technologies. Such transfers are prohibited even if the exporting State does not intend the arms to be used in violation of the law or does not know with certainty that they would be used in such a way if there is a clear risk.¹⁰²

States Parties to the UN [Arms Trade Treaty](#) (ATT) have additional obligations to deny arms exports if they 'know' that the arms 'would' be used to commit international crimes, or if there is an 'overriding risk' that the arms transferred 'could' be used to commit serious violations of international humanitarian law.¹⁰³ Under Article 6(3) of the ATT, States Parties undertake not to authorise any transfer of arms if they have knowledge that those would be used in the commission of genocide, crimes against humanity, or other war crimes. Under Articles 7 and 11, State Parties undertake not to authorise any export of conventional arms, munitions, parts, and components that would undermine peace and security or be used to commit serious violations of international humanitarian law and international human rights law.

EU Member States are further bound by [EU Common Position on Arms Exports \(EUCP\)](#).¹⁰⁴ Article 2 requires EU Member States to 'deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.' To this end, the EUCP states that a 'real risk' is sufficient for

⁹⁹ Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany), para 13. See also Nicaragua v. Germany, Declaration of Judge Tladi: "In his Declaration on the Court's Order of 30 April 2024 on Nicaragua v. Germany, Judge Tladi explaining that the Court's Order in that case makes plain that "in the consideration of the responsibility of Germany, or any other State, for breaches of either the Genocide Convention or international humanitarian law, including responsibility for not taking appropriate measures in the face of a risk of such breaches, the effect of this Order would be to remove any plausible deniability of knowledge of the risk".

¹⁰⁰ Human Rights Council, '[Anatomy of a Genocide](#)' Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 25 March 2024, A/HRC/55/73, para 97(a).

¹⁰¹ [International Committee for the Red Cross \(ICRC\), Article 1 Respect for the Convention](#), para 195.

¹⁰² UN OHCHR, '[Arms exports to Israel must stop immediately: UN experts](#)', 23 Feb 2024.

¹⁰³ The Arms Trade Treaty, especially articles 6 and 7.

¹⁰⁴ EU Common Position on Arms Exports 2008/944/CFSP.

triggering the license's denial. The ICJ Order would satisfy the low knowledge threshold of 'a clear risk'. The Organisation for Security and Cooperation in Europe (OSCE) further requires States members/party to adhere to the [OSCE Principles Governing Conventional Arms Transfers](#) in their arms export decisions.

Additionally, the national legislation of many Third States prohibits the export of weapons when there is a risk that those weapons may be used for violations of international law. The US [Conventional Arms Transfer \(CAT\) policy](#) issued in February 2023 guides the United States' arms export decisions. Section 4 'Arms Transfers and Human Rights' clarifies that no arms transfer will be authorized where the United States assesses that 'it is more likely than not' that those arms 'will be used by the recipient to commit, facilitate the recipients' commission of, or to aggravate risks that the recipient will commit: genocide; crimes against humanity; grave breaches of the Geneva Conventions of 1949, including attacks intentionally directed against civilian objects or civilians protected as such; or other serious violations of international humanitarian or human rights law'. The 'more likely than not' assessment is met after the ICJ Order, and any transfer of weapons will be in breach of the CAT policy. Criteria 2 of the UK [Strategic Export Licencing Criteria](#) requires the UK government to refuse to licence military equipment for export where there 'is a clear risk that the items might be used to commit or facilitate a serious violation of international humanitarian law'.¹⁰⁵ The same principles apply where arms or military equipment might be used to commit or facilitate acts which constitute genocide.¹⁰⁶ Article 6(3) of Germany's [War Weapons Control Act](#) also prohibits the transfer of arms if there is 'reason to believe that the weapons may be used for violations of international law'.

Some Third States have said they have suspended or are going to suspend arms exports, including Italy, Spain and [a region of Belgium](#). As a result of a petition by NGOs, the Court of Appeal in the Hague [ordered](#) the Dutch government to stop all export and transit of F-35 fighter jet parts to Israel - the government has however [publicly stated](#) that it is actively looking for ways to work around the court ruling. The UK supplies approximately 15% of the components for the F-35s used in Israel's bombardments of Gaza.¹⁰⁷ In the UK, [MPs have asked the government](#) to consider revoking arms export licences to Israel. UK Ministers have responded to such concerns by referencing the [UK's strategic export licencing system](#), under which all applications for a licence to export military equipment and related items are assessed against a set of criteria, and emphasised '[Israel's right to defend itself](#)'¹⁰⁸ within the bounds of international humanitarian law. The [criteria](#) reflect, among other things, the UK's obligations under international law, and the potential for the goods to be used in the violation of human rights. The Government says [export licences are kept under review](#) and can be amended, suspended, refused or revoked as circumstances require.¹⁰⁹

¹⁰⁵ 89 NTE 2021/14: updates to the export control regime - GOV.UK (www.gov.uk)

¹⁰⁶ See in particular SELC criterion 1 (b). Over 1,000 judges and lawyers [have urged](#) the UK government to suspend licensing arms for export to Israel.

¹⁰⁷ Based on [data](#) from the Campaign Against Arms Trade (CAAT), updated to Feb 2024.

¹⁰⁸ This statement by the UK government is not applicable here, see above fn 85.

¹⁰⁹ In March, the shadow UK foreign secretary, David Lammy, [urged](#) David Cameron, the foreign secretary, to publish the Foreign Office formal legal advice on whether Israel is breaching international humanitarian law in Gaza.

Nearly all (99%) of Israel's imported weapons, however, come from the US and Germany, and shipments from both have increased sharply since 7 October 2023.¹¹⁰ For example, after 7 October, the US government started transferring massive amounts of weapons to Israel and has continued doing so after the ICJ order of 26 January.¹¹¹ On 8 May, the US Defence Secretary Lloyd Austin [confirmed](#) reports that the United States paused one shipment of high payload munitions amid the Israeli military's push to invade the southern Gaza city of Rafah. Two days later, on 10 May, [the US State Department said](#) it was 'reasonable to assess' that the weapons it has provided to Israel have been used in ways that are 'inconsistent' with international human rights law, but that there is not enough concrete evidence to link specific US-supplied weapons to violations or warrant cutting the supply of arms. Similarly, exports by the German government increased in the end of 2023, and have continued in 2024.¹¹²

Any state providing weapons and military equipment may likely be found responsible for a failure to prevent, considering the substantial evidence of grave violations of International Humanitarian Law and the potential commission of genocide. Third States should immediately halt arms transfers to Israel, including export licenses and military aid. Military intelligence must also not be shared where there is a clear risk that it would be used to violate international humanitarian law.

Countries should also immediately halt the transfer of jet fuel shipment to Israel for use by the Israeli military.¹¹³ Similar actions were taken in other context of serious human rights violations and allegations of genocide and other international crimes. For example, aviation fuel [enabled the Myanmar military](#) to carry out air strikes constituting war crimes on schools, clinics, religious buildings, and other civilian infrastructure.¹¹⁴ Following evidence linking foreign and domestic companies to the supply of aviation fuel to the Myanmar military, the UK, the USA, Canada, the EU, and Switzerland imposed sanctions on companies and individuals in Myanmar and Singapore involved in the procurement and distribution of aviation fuel into Myanmar. The USA extended the reach of potential sanctions, stating that anyone involved in this industry was at risk.

¹¹⁰ Estimates put Germany's arms sales to Israel at €300 million in 2023 alone. Other military exporters include France, the UK, Canada, and Australia. Drone manufacturers providing their technology to Israel's Armed Forces have received funds from the EU's Horizon Europe project, a [claim recently corroborated](#) in an analysis by two independent monitors, Statewatch and Informationsstelle Militarisierung (IMI).

¹¹¹ <https://afsc.org/companies-2023-attack-gaza> By Dec. 25, Israel [received](#) more than 10,000 tons of weapons in 244 cargo planes and 20 ships from the U.S. These transfers [included](#) more than 15,000 bombs and 50,000 artillery shells within just the first month and a half. These transfers have been deliberately [shrouded in secrecy](#) to avoid public scrutiny and prevent Congress from exercising any meaningful oversight. Between October and the beginning of March, the U.S. [approved](#) more than 100 military sales to Israel, but publicly disclosed only two sales. A list of known U.S. arms transfers is maintained by the [Forum on the Arms Trade](#).

¹¹² Forensis, 'Report: Short Study - German Arms Exports to Israel 2003-2023' (2 April 2024), <https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>.

¹¹³ Demands to stop sending jet fuel to Israel are not new. For example, in 2014 [Amnesty International reported](#) how the US government had continued to supply hundreds of thousands of tons of fuel - including fuel for fighter jets and military vehicles - to Israel's armed forces despite a soaring civilian death toll from aerial and other military attacks and called for the shipment of fuel to stop amid evidence of war crimes in Gaza.

¹¹⁴ See Amnesty International, [Deadly Cargo: Exposing the Supply Chain that Fuels War Crimes in Myanmar](#), Nov 2022.

Independently from home State regulation, companies that sell weapons, arms, ammunition, technology, and other military supplies to the government of Israel have their own responsibility to respect human rights and abide by international humanitarian law and international criminal law, as recognised in the [UN Guiding Principles on Business and Human Rights](#) (UNGPs) 'over and above compliance with national laws and regulations'.¹¹⁵ [See above](#) for a non-exhaustive description of some of these companies. UNGPs commentary to Principle 11 clarifies that the responsibility to respect human rights 'is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations'.

Buying and importing arms

An arms embargo against Israel should also cover buying and importing Israeli weapons. Since October 2023, Israeli arms exports, especially to countries in the global North, have increased. For example, in December 2023, the Australian Department of Defence signed a contract with Hanwha Defense Australia, which in February [awarded a contract](#) worth USD600 million to Elbit Systems, an Israeli military technology company and defence contractor, to supply protection and fighting capabilities for Redback infantry fighting vehicles.¹¹⁶ At the end of October 2023, Elbit's subsidiary in Sweden, Elbit Systems Sweden, [was awarded a contract](#) worth approximately USD170 million to become the integration partner for the Swedish Army digitalization program LSS Mark. Elbit also [signed deals with the US](#) and [with Brazil](#). Nextvision, an Israeli UAV camera company, [is seeing ever-growing sales](#). Rafael, a defence technology company, also [claims](#) a peak in orders for 2024.

Elta Systems, an Israeli defence company specialised in radars, and a subsidiary of Israel Aerospace Industries, [is selling drones](#) to the Portuguese navy for underwater intelligence. And in general security, exports [have seen a rise](#). The Israeli arms industry and army are interwoven institutions, and the development of weapons by Israeli arms manufacturers happens through testing and marketing only possible in the context of Israel's occupation and pertinent violations of international law. Buying arms from these companies provides both financial capacity and an economic incentive to the same manufacturers that are instrumental in shaping the capabilities of and illegal operations by the army. The Israeli arms industry [has reportedly used](#) the West Bank and Gaza as a testing ground for new weapons.

As detailed [above](#), In the *Bosnia v Serbia* case, the ICJ specified that States have the responsibility 'to employ all means reasonably available to them, so as to prevent genocide so far as possible', particularly those States with 'the capacity to influence effectively the action of persons likely to commit, or already committing, genocide'.¹¹⁷ The type of links cited in the *Bosnia v Serbia* case were 'political, military and financial links, as well as links of all other kinds'.¹¹⁸ The ICJ found that Federal Republic of Yugoslavia (FRY) was able to influence the perpetrators of the Srebrenica genocide 'owing to the strength of the political, military and financial links'.¹¹⁹ In the previous

¹¹⁵ UN Guiding Principles on business and human rights (UNGPs), 2011, Commentary to Principle 11.

¹¹⁶ Elbit is the primary provider of land-based military equipment and unmanned aerial vehicles to the Israeli forces.

¹¹⁷ *Bosnia v Serbia*, paras. 430 and 431.

¹¹⁸ *Bosnia v Serbia*, para. 430 (emphasis added).

¹¹⁹ *Bosnia v Serbia*, para. 434.

Order indicating provisional measures delivered in 1993, the Court had required the FRY to ensure that 'any military, paramilitary or irregular armed units which may be directed or supported by it, as well as *any organizations and persons which may be subject to its control, direction or influence*, do not commit any acts of genocide, of conspiracy to commit genocide, of direct and public incitement to commit genocide, or of complicity in genocide'.¹²⁰ The ICJ clarified in 2007 that 'the use, in the above passage, of the term "influence" is particularly revealing of the fact that the Order concerned not only the *persons or entities* whose conduct was attributable to the FRY, but also all those with whom the Respondent [Serbia] *maintained close links and on which it could exert a certain influence*'.¹²¹ The responsibility of the State authorities was to make 'the best efforts within their power to try and prevent the tragic events then taking shape'.¹²²

As also [discussed below](#) in relation to the suspension of trading and public procurement relations, the wording used in *Bosnia v Serbia* gives a broad interpretation of the 'capacity to influence' of Third States. The capacity to influence that was attributed to the FRY in relation to the genocide committed by Serbia included also links with entities that had close links with Serbia. Arguably, in the case of Israel the capacity to influence of Third States could be extended to corporations domiciled in their territories that are maintaining close links with the government of Israel, the Israeli army, or Israeli entities (including companies) involved in the military campaign in Gaza. Further, academic institutions have also been indispensable in the development of weapons and doctrines used in the commission of serious human rights violations and in the rationalization of such violations; while academic research involving military or dual-use projects may also be aiding and abetting the commission of international crimes.

As such home States should stop buying and importing arms from Israeli companies and should require corporations domiciled in their territories to do the same. For example, some States procure military technology and weapons from Elbit Systems. In February, Japanese company Itochu Aviation [announced](#) that it ended its strategic cooperation memorandum of understanding signed with Elbit Systems 'taking into consideration the International Court of Justice's order on January 26'. The agreement, signed in March 2023, was based on a request from the Japan's defence ministry for the purpose of importing defence equipment for Japan's security. Itochu Aviation is part of Itochu Group, one of the leading Japanese 'sogo shosha' companies (Japanese companies trading in a wide range of products and materials). The agreement between them was not for the transfer of weapons or the provision of Japanese technology for the Israeli military, but rather to procure material for the Japanese military. Still, as a result of the ICJ's provisional measures order, Itochu Aviation [decided](#) to suspend cooperation.

2. Sanctions and trading relations

¹²⁰ *Bosnia v Serbia*, Order 8 Apr 1993, para. 52 (emphasis added).

¹²¹ *Bosnia v Serbia*, para. 435 (emphasis added).

¹²² *Bosnia v Serbia*, para. 438.

Sanctions against individuals and entities

Sanctions against Israel so far have targeted extremist individuals and organisations as opposed to central State organs and government officials responsible for designing, applying and implementing the State's unlawful policies (including, *inter alia*, Ministers in the Israeli War Cabinet and Ministerial Committee for National Security Affairs; other Ministers with relevant portfolios (e.g. Minister of Communications); the Israeli army and its commanders overseeing Israel's offensive in Gaza and governing the West Bank; the army's legal advisors, as well as the Ministry of Justice's international law division officials). Third States should impose further sanctions targeting Israeli entities, including key State organs and officials; arms companies and financial institutions: as well as organisations that have been used for incitement of genocide, such as media platforms and media broadcasters responsible for propaganda. Targeted and lawful economic sanctions are key tools for Third States to influence the behaviour of other States.

In response to South Africa's apartheid, the international community adopted economic sanctions as condemnation and pressure. Jamaica was the first country to ban goods from apartheid South Africa in 1959. In 1962, the UN General Assembly passed [Resolution 1761](#) condemning South African apartheid policies and practices, and calling for imposing economic and other sanctions on South Africa. While countries such as the US and the UK were at first reluctant to place sanctions, by the late 1980s, both countries and 23 other nations passed laws placing various trade sanctions on South Africa. Economic sanctions against South Africa exerted significant pressure that helped to end apartheid.¹²³

In October 2023, the UK, US, and Canada [announced](#) sanctions to maximise pressure on the Myanmar military regime responsible for the repression of the civilian population in Myanmar. This latest round of sanctions targeted arms dealers responsible for the supply of restricted goods, including aircraft parts, to the security forces, as well as financiers of the Myanmar military.

In response to Russia's crime of military aggression against Ukraine, the EU has, since March 2014, progressively imposed [sanctions](#) on Russia 'designed to weaken Russia's economic base, depriving it of critical technologies and markets and significantly curtailing its ability to wage war'. Sanctions have targeted over 1,700 individuals and over [400 entities](#), including banks, insurance companies and financial institutions, companies in the military and defence sectors, companies in the aviation, shipbuilding and machine building sectors, IT and telecom companies, one diamond mining company, and media organisations responsible for propaganda and disinformation. The EU has also adopted [sanctions](#) against Iran for the supply of drones to Russia and North Korea for its armament supply. Already in June 2014, the EU Council [had adopted](#) 'measures to implement the EU's policy of non-recognition of the illegal annexation of Crimea and decided on a ban on goods originating from Crimea or Sevastopol'. Based on this line of argument, sanctions against Israel should have already been in place, given

¹²³ While the legal framework of apartheid is beyond the scope of this expert legal opinion, Palestinian, Israeli, and international human rights organisations, along with the UN CERD, UN Special Procedures and some States of the international community have recognized Israel's commission of the crime of apartheid against the Palestinian people. Institutional discrimination and racism are considered precursors and drivers of acts of genocide. See for example [a compilation](#) of such recognition.

Israel's unlawfully prolonged military occupation and apartheid and illegal annexations, separately from the current imperative to prevent genocide.

The UK Government for example has at its disposal powers to impose financial sanctions on designated persons for purposes including the interests of international peace and security and to promote the resolution of armed conflicts or the protection of civilians in conflict zones.¹²⁴

Pursuant to s.1(1)(a)-(b) and s.1(2) of the Sanctions and Anti-Money Laundering Act 2018, an appropriate Minister may make sanctions regulations where the Minister considers that it is appropriate to do so for the purposes of the UK's compliance with a UN or any other international obligation, or for the purposes of furthering the interests of international peace and security, promoting the resolution of armed conflicts or the protection of civilians in conflict zones, or promoting compliance with international humanitarian law. Pursuant to s.5 of the 2018 Act, regulations made under s.1 may make provision for trade sanctions measures, which can encompass arms embargoes, sector-specific export and import measures, and other trade restrictions.

Suspension of trade relations and public procurement

The duty to '[ensure respect by others](#)' under the Geneva Conventions requires all States to do everything reasonably in their power to prevent and stop violations of international humanitarian law by Israel, particularly where a State has influence through its political, military, economic or other relations.¹²⁵ The ICJ held in its [order on provisional measures in the Ukraine v Russia](#) case that there are several means to fulfil the obligation to prevent genocide including 'bilateral engagement'.¹²⁶ UN experts have [called](#) for 'sanctions on trade, finance, travel, technology or cooperation'. In her [report](#) to the Human Rights Council dated 26 March, the Special Rapporteur on the occupied Palestinian territory recommended in addition to an arms embargo on Israel, also 'other economic and political measures necessary to ensure an immediate and lasting ceasefire and to restore respect for international law, including sanctions'.¹²⁷ Maintaining ties through trade and investment, particularly in the defence and security-military sectors, risks contributing to the conditions which the ICJ Order identified as posing a plausible risk of genocide in Gaza, as well as increasing Israel's capacity for violations of international humanitarian law.

Third States are required under the Genocide Convention to 'employ all means reasonably available' to prevent genocide. In accordance with their duties under the Genocide Convention, Third States must take immediate action to prevent the risk of genocide in Gaza, commensurate with their capacity to influence Israel. The capacity of a state to 'influence effectively' Israel's

¹²⁴ The UK Department of International Trade has recognised the role that trade sanctions can have 'to fulfil a range of purposes, including supporting foreign policy and national security objectives, as well as maintaining international peace and security, and preventing terrorism'. [Department of International Trade Guidance: Trade sanctions, arms embargoes, and other trade restrictions](#), October 2021.

¹²⁵ Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949, Article 1 - Respect for the Convention, [Commentary of 2020](#), para 186.

¹²⁶ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation) Request for the Indication of Provisional Measures Order of 16 March 2022, para 57.

¹²⁷ 'Anatomy of a Genocide', para 97(a).

actions in Gaza is in part determined by the depth of its economic ties to Israel. A key area of certain States' capacity to influence Israel is that of trade relations. Third States with the strongest trade relations with Israel (especially the US, the UK, and EU Members States) must view these relations as a means to prevent genocide if effectively leveraged to influence Israel's conduct in Gaza.

One country cutting economic ties may or may not have a direct effect in preventing genocide, but as the ICJ pointed out in *Bosnia v Serbia*, the duty is to act, and 'the combined efforts of several States, each complying with its obligation to prevent' may avert the commission of genocide.¹²⁸ The Court noted that 'the obligation to prevent genocide places a State under a duty to act which is not dependent on the certainty that the action to be taken will succeed in preventing the commission of acts of genocide, or even on the likelihood of that outcome'.¹²⁹ Several countries, each putting major economic pressure by cutting off or suspending trade deals and economic cooperation and general diplomatic actions such as removal of ambassadors can have a combined effect of restraining Israel.

Some Third States have already taken action. For example, Turkey has [announced](#) a commercial trade ban with Israel, while in South America, Bolivia and Colombia [have cut diplomatic ties](#) and downgraded contacts. But Third States with the most 'capacity to influence' are still to take action. According to [trade figures](#) published by the European Commission, the EU is Israel's biggest trade partner in terms of value, with a two-way flow of goods, services and foreign direct investments. The EU [has an obligation](#) to suspend its [Euro-Mediterranean Association Agreement](#) with Israel given that its offensive, not to mention Israel's decades-old military occupation and apartheid system, violates that agreement's provisions on human rights.¹³⁰ The Association Agreement states in its Preamble that 'the observance of human rights and democracy... form the very basis of the Association' and in Article 2 that 'Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which... constitutes an essential element of this Agreement'.¹³¹ On 10 April, the UN Special Rapporteur on the occupied Palestinian territories [called](#) on the EU to 'suspend its trade and institutional ties with Israel to deter war crimes that amount to genocide in the Gaza Strip'. Albanese added that the formal suspension of trade relations should extend to 'private corporations registered under national jurisdictions of EU member states'. On 27 May, EU foreign ministers unanimously [agreed to call](#) for an Association Council with Israel to discuss the country's compliance with its human rights obligations under the EU-Israel Association Agreement.

¹²⁸ *Bosnia v Serbia* para. 430.

¹²⁹ *Bosnia v Serbia* para. 461.

¹³⁰ A decision to halt the agreement would require the unanimous backing of all 27 EU member states. A recent [initiative by the leaders of Ireland and Spain](#) calling on the European Commission to suspend the EU-Israel agreement has been met with resistance by other member states.

¹³¹ Euro-Mediterranean Agreement, establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, Article 82 states that Each of the Parties may denounce the Agreement by notifying the other Party'.

The UK is Israel's second largest trading partner.¹³² In March 2023, the British and Israeli Governments [announced](#) a 2030 roadmap for UK-Israel bilateral relations, which set out plans to cohere, deepen and expand their collaboration 'underpinned by extensive security and defence cooperation'.¹³³ As explained in that strategy, the relationship between the British government and Israel 'has never been closer'.¹³⁴ The UK government should suspend the 2030 Road Map for UK-Israel bilateral relations and negotiations towards an enhanced trade agreement and to initiate a review into the suspension of the UK's bilateral trade agreement with Israel and consider the imposition of sanctions.¹³⁵

Divestment and exclusion

Third States engaged in commercial activities with companies potentially implicated in acts of genocide in Gaza, for example through public procurement, as shareholders, or through public pension fund and other investments should terminate such contracts and exclude such companies.

Pension funds should also withdraw their investments from Israeli banks, Israel Bonds, and other financial institutions, considering the connection with illegal settlements and other violation of international law. In February, Velliv, one of Denmark's largest pension funds [announced](#) that it was withdrawing investments from 11 banks in Israel. Velliv [cited](#) EU and UN policies and standards around responsible investment, and risks related to financing the expansion of the settlements or funding annexation and settlements' infrastructure in the occupied West Bank.

Businesses, including European companies, operating with, or providing services to Israeli settlements, play a critical role in the functioning, sustainability, and expansion of settlements. Without the economic support provided by both the provision and purchase of goods and services to or from Israeli settlements, the underlying acts of appropriation by the Israeli State of Palestinian public and private property, the transfer of that property to Israeli settlers (natural or legal persons), and the denial of access to that land to the Palestinian population, would not be as easily maintained, or as easily achieved.¹³⁶ Considering the range of international humanitarian and human rights law violations associated with the settlements, companies, including European financial institutions, have a responsibility to ensure that they are not involved in violations of international law and are not contributing to, profiting from, or complicit

¹³² See comments made by Anita Leviant, President of the Israel Britain Chamber of Commerce (IBCC), UK Press Release '[UK and Israel Sign Trade Continuity Agreement](#)', 18 February 2019.

¹³³ FCDO, 21 March 23, [2030 Roadmap for UK-Israel Bilateral Relations](#).

¹³⁴ FCDO, 21 March 23, [2030 Roadmap for UK-Israel Bilateral Relations](#).

¹³⁵ The UK Bilateral Trade Agreement incorporates the EuroMediterranean Association Agreement between the EU and Israel. In recent years, the UK has taken steps to deepen its relationship with the Israeli Government, see PM Office Press Release, [PM meeting with Prime Minister Netanyahu](#), 2 November 2017. In 2021, the UK signed a Memorandum of Understanding with the Government of Israel, elevating the relationship to a 'strategic partnership' and announcing deepening ties and collaboration in the areas of diplomacy, defence and security, economy, cyber, science, technology, climate, see FCDO, 29 Nov 21, [Memorandum of Understanding](#).

¹³⁶ See also: James G. Stewart, 'Corporate War Crimes: Prosecuting the Pillage of Natural Resources', 2011, <https://www.justiceinitiative.org/uploads/9a7c2390-4d10-4f0b-9f0c-f62d578c7d9b/pillage-manual-2nd-edition-2011.pdf>. See also ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Written Comments of Namibia of 25 October 2023, pp. 16-23, paras. 36-56, <https://www.icj-cij.org/sites/default/files/case-related/186/186-20231025-wri-12-00-en.pdf>.

in international crimes. The UN Office of the High Commissioner for Human Rights [clarified in a 2018 report](#) that 'Considering the weight of the international legal consensus concerning the illegal nature of settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in activities in the settlements in a way that is consistent with the UN Guiding Principles and with international law'. In recent years, several financial institutions have taken up their responsibility by divesting from business linked to Israeli settlements. For example, in 2021, Kommunal Landspensjonskasse, Norway's largest pension company, [divested](#) from 16 companies linked to Israel's settlement enterprise, the Norwegian Government Pension Fund Global [announced](#) that it would exclude three companies that are actively involved with Israeli settlements, whereas Norwegian asset manager Storebrand [has divested](#) from over 20 such companies in the past decade, and completely divested from Israeli bonds.

Third States should also impose trade bans on any products and services of companies that are implicated in the illegal settlements. In March 2024 the [UN rapporteur on the occupied Palestinian territory](#) reported that 'Israel's actions have been driven by a genocidal logic integral to its settler-colonial project in Palestine', which since 1967, Israel has advanced through military occupation, 'stripping the Palestinian people of their right to self-determination'.¹³⁷ In the case of the denial of the right to self-determination, the commentary to the International Law Commission Draft Articles on State Responsibility stresses that 'Collective non-recognition [of the situation created by the serious breach as law] would seem to be a prerequisite for any concerted community response against such breaches and marks the minimum necessary response by States to the serious breaches'.¹³⁸ Further to this point, resolutions by the UN General Assembly issued in the decolonisation era clearly [reiterate](#) the member states' duty to act to bring about the end of colonisation and apartheid. Notably in [Resolution 3236 of 1974](#), the General Assembly appealed: 'to all States and international organizations to extend their support to the Palestinian people in its struggle to restore its rights, in accordance with the Charter'. Such support was extended to the South African people in the form of embargoes against the apartheid government.

3. Criminal and administrative proceedings

Domestic prosecuting authorities of Third States should, based on their obligations under the Genocide Convention to prevent and punish genocide, as well as their obligations under general international law,¹³⁹ and the ICJ Order, investigate and prosecute companies (where national laws allow) and corporate officials for their involvement in acts of genocide in Gaza. The UNGPs clarify that in conflict-affected areas home States should consider 'exploring civil, administrative, or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses' such as genocide.¹⁴⁰ Domestic Courts should also halt the export of weapons to Israel. Lawyers could initiate injunction actions to stop the respective government from exporting or authorizing exports of weapons to Israel. This applies to states such as the US, Canada, Germany, Italy, the UK, and the Netherlands. Such an

¹³⁷ 'Anatomy of a Genocide', paras. 7 and 12.

¹³⁸ Commentary to Article 41.

¹³⁹ See, e.g., Preamble to the Rome Statute: "Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes".

¹⁴⁰ UNGPs commentary principle 7

obligation would stem from Article 1 of the Genocide Convention, Article 6(3) Arms Trade Treaty, and Article 2 of the EU Council Common Position – where applicable.

Court cases have been undertaken in the US, the UK, the Netherlands, Denmark, and Germany intended to prevent arms exports to Israel. For example, on 12 February, the Dutch Appeals Court ordered the Netherlands to halt the export of F-35 fighter jet parts to Israel. [The court found](#) that there was a 'clear risk' that the parts would be used to commit or facilitate serious violations of international humanitarian law, as 'there are many indications that Israel has violated the humanitarian law of war in a not insignificant number of cases'. The human rights organizations that brought a case against the Dutch government argued, based on the Genocide Convention, the Geneva Convention, and customary international law, that the Dutch government is required to re-evaluate the permit (originally granted in 2016) to export and transit F-35 parts to Israel. In the UK, human rights organisations [have applied](#) for a judicial review of the government's export licences for the sale of weapons to Israel. Home States should hold accountable any business enterprises contributing to the Israeli state and military's capacity for inciting and committing genocidal acts in Gaza.

4. Business and human rights responsibilities

Heightened Human Rights Due Diligence

The [UN Guiding Principles on business and human rights](#) (UNGPs), an international standard unanimously endorsed by the UN in 2011, set up the expectation that all business enterprises 'should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved'.¹⁴¹ The UNGPs and the [OECD Guidelines for Multinational Enterprises](#) require corporations to apply human rights due diligence process 'to identify, prevent, mitigate, and account for how they address their impacts on human rights'.¹⁴² These responsibilities apply also in relation to the supply chain and business relationships.

On 24 April the [European Parliament adopted](#) the final text of the EU Corporate Sustainability Due Diligence Directive, creating obligations for companies to mitigate their impacts on human rights.¹⁴³ National laws of home States (for example, the German Supply Chain Due Diligence Act or the French duty of vigilance law), have already established mandatory human rights due diligence requirements for companies domiciled in their territory. In situations of armed conflict, businesses are required to respect the standards of international humanitarian law, and enterprises 'should treat all cases of risk of involvement in gross human rights abuses [such as genocide] as a matter of legal compliance'.¹⁴⁴

In its principle 7, the UNGPs provide further guidance on how home States can support business respect for human rights in conflict-affected areas, where 'the risk of gross human rights abuses is heightened'. Home States of companies that have operations or business relationships in Israel should engage 'at the earliest stage possible' with those companies to help them to identify and

¹⁴¹ UNGPs, Principle 11.

¹⁴² UNGPs principle 15(a).

¹⁴³ On 24 May, the Council of the EU gave the final approval to the Directive.

¹⁴⁴ UNGPs Principle 23(c).

prevent the risk of their activities being linked to acts of genocide in Gaza. Home States should 'deny access to public support and services for companies 'involved with gross human rights abuses', such as acts of genocide and other atrocity crimes, as well as war crimes. Home States should also ensure that their 'policies, legislation, regulations, and enforcement measures are effective in addressing the risk of business' involvement in gross human rights abuses' such as genocide. Finally, home States should 'foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies'.¹⁴⁵

The UNGPs do not specifically mention a different type of due diligence for conflict-affected areas but are built around a concept of proportionality: the higher the risk, the more complex the human rights due diligence processes. Hence, 'because the risk of gross human rights abuses is heightened in conflict-affected areas', duties of States and business responsibility are heightened. The UN Working Group on business and human rights clarifies that a conflict situation requires heightened obligations for States, businesses and heightened human rights due diligence that considers the impact of business on the conflict itself in addition to human rights.¹⁴⁶ Accordingly, businesses with operations or business relationships in Israel should address a range of complex impacts related to conflict and its root causes and their impact on the wider economy. It is critical for companies to have a thorough understanding of the international armed conflict in place, of military occupation, and, accordingly, to integrate conflict analysis into their human rights due diligence. The armed conflict is not limited to the current 'conflict' in Gaza and the rights covered by the ICJ Order. This inevitably requires corporations to expand their understanding of business impact and contribution to the wider occupation and armed conflict, and pertinent violations of international humanitarian and human rights law by the Israeli government, as well as individuals and companies linked to it. Heightened human rights due diligence should be based on consultation and engagement with external stakeholders – e.g. national and local experts. Companies must conduct heightened due diligence regarding both their operations and their whole supply chain to identify risks of where they may be contributing to Israeli violations against Gaza's civilian population.

For example, companies in the tech sector are currently being monitored in relation to the heightened human rights due diligence process they are taking in relation to the situation in Gaza. As discussed above, the tech sector is playing a central role in the current situation in Gaza in relation to incitement of genocide on media platforms, the use of surveillance technology, the role of tech in providing information vital to an effective humanitarian response in Gaza, and the centrality of tech in the Israel Defence Forces' strategies and tactics in Gaza. In this regard, also see the US Department of State's Guidance to US businesses seeking to prevent their products or services with surveillance capabilities from being misused by government end-users to commit human rights abuses.

Beside the current situation, already in 2013, the report of the international fact-finding mission to investigate the implications of the Israeli settlements on the rights of the Palestinian people,

¹⁴⁵ UNGPs commentary principle 7.

¹⁴⁶ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises Business, human rights and conflict-affected regions: towards heightened action, A/75/212, July 2020.

showed that 'business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements'.¹⁴⁷ The report listed in paragraph 96 several business activities raising particular human rights concerns, including construction materials and equipment, surveillance and identification equipment, transport services, banking and financial services. In 2016, the UN Human Rights Council, in its resolution 31/36 on Israeli settlements in the Occupied Palestinian Territory requested the UN OHCHR to produce a database of all business enterprises involved in the activities detailed in paragraph 96. As a result, in 2020 the OHCHR released a [database](#) of 112 business entities involved in activities linked to the settlements, which in addition to Israeli companies also includes American, Dutch, French and UK companies.¹⁴⁸ It is necessary that home States require companies domiciled in their territory to end any existing business relationship with Israel that could be linked to the current situation in Gaza or to the illegal settlements. Independently from their home State regulation, corporations linked to those activities need to consider ending their existing operations and business relationships and not entering into new ones.

Responsible exit and leverage

Both the UNGPs and the OECD Guidelines outline the decision-making process for business exit and termination, based on an enhanced human rights due diligence process and the concept of leverage. When considering '[ending the relationship](#)', the UNGPs elaborate on the business responsibility to engage with a business partner and use its leverage to address adverse impacts.

The UNGPs are clear that before considering ending relationships, a business enterprise should seek to be part of the solution by addressing adverse impacts through exercising leverage. Generally, entities with which an enterprise has a business relationship should be given notice and opportunities to correct and remedy adverse impacts, with appropriate escalation. There are, however, special considerations in cases of possible complicity in gross human rights abuses, as [clarified by the OHCHR](#).¹⁴⁹ As the UNGPs make clear, these kinds of cases should be treated with the utmost seriousness, and businesses should be expected to respond 'as a legal compliance issue'.¹⁵⁰ Similarly, the OHCHR also notes that businesses 'should treat this risk in the same manner as the risk of involvement in a serious crime, whether or not it is clear that they would be held legally liable'.¹⁵¹ It is clear that the current situation in Gaza, in addition to the ongoing international humanitarian law and human rights violations related to the settlements and occupation, is one of these serious situations. Although the UNGPs stipulate that businesses should seek to exercise leverage where they are contributing or linked to such harms, it may be the case that business enterprises have little if any leverage with governments involved in carrying out egregious violations, such as in the case of Israel. Where sufficient leverage is

¹⁴⁷ Human Rights, council, Report of the independent international factfinding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, February 2013, A/HRC/22/63, para. 96.

¹⁴⁸ Human Rights Council, Report of the United Nations High Commissioner for Human Rights, Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/43/71, 28 Feb 2020.

¹⁴⁹ OHRCH, [Business and human rights in challenging contexts](#), Aug 2023, p. 10.

¹⁵⁰ UNGPs, Commentary to Principle 23.

¹⁵¹ OHCHR, [Corporate Responsibility to Respect Interpretive Guide](#), 2012, pp. 79-80.

lacking, those enterprises which are at risk of being involved in gross human rights abuses will need to rapidly come to a decision about whether and how to exit, and the necessary mitigation measures that will need to be in place.¹⁵² In relation to the current situation in Gaza, where business enterprises lack the leverage to prevent or mitigate adverse impacts, they should consider ending any existing relationships.

If a company's operations exacerbate the conflict or cause or contribute to genocide, other atrocity crimes, war crimes and other human rights harms, it is necessary to withdraw. The severity of potential or actual impacts, judged by their scale, scope, and irremediable character, is a key consideration in whether and when to terminate a business relationship.¹⁵³ The more severe the harms involved, the more justifiable it would be for a business to consider terminating the business relationships involved in. If, like in relation to the current situation in Gaza, there are risks of 'being involved in gross abuses of human rights such as international crimes, [a business] should carefully consider whether and how it can continue to operate with integrity in such circumstances'.¹⁵⁴ Risks are particularly salient for companies investing in or partnering with State-owned enterprises or entities tied to the Israeli government, which could find themselves aiding, abetting, or otherwise indirectly facilitating Israel's genocide and violations of international law. In this respect, firms providing arms or weapons-making materials, dual-use technologies or military equipment risk being directly complicit in ongoing violations.

Companies must also cease any activity or cut financial ties that could contribute directly or indirectly to ongoing crimes committed by the Israeli authorities or cease any activity for which they cannot efficiently implement measures to prevent or address negative impacts. Companies whose activities, products, or services are directly linked to severe human rights violations currently happening in Gaza are expected to have a rapid response and to consider responsible disengagement. Responsible disengagement is a global standard of expected conduct for all companies wherever they operate and exists independently of the home States' ability or willingness to fulfil their own human rights obligations. A responsible exit [requires](#) business to anticipate and plan a [clear exit strategy](#) in advance and to develop mitigation strategies. Companies have been accused of failing to develop and communicate a responsible exit strategy in other conflict situations. For example, there is currently a [complaint against Telenor](#) of non-compliance with responsible disengagement under the OECD Guidelines when it decided to sell its Myanmar operations.

Financial institutions, including banks and pension funds also have a responsibility to use their leverage through meaningful, time bound engagement to ensure their investee companies act responsibly and in line with international law standards, and to divest from those who do not. As [stated by the UN Working Group on Business and Human Rights](#), investors have an 'unparalleled ability' to influence business enterprises: 'institutional investors would be expected to seek to prevent or mitigate human rights risks identified in relation to shareholdings' and if efforts in this regard are not successful, the UNGPs stipulate that 'the institutional investor should consider ending the relationship'. Financial institutions should also consider their [impacts](#)

¹⁵² OHRCH, [Business and human rights in challenging contexts](#), p. 10.

¹⁵³ UNGPs, Commentary to Principle 14, and OHRCH, [Business and human rights in challenging contexts](#), p. 12.

¹⁵⁴ OHCHR, [Corporate Responsibility to Respect Interpretive Guide](#), p. 80.

[on cash transfers](#) to Palestinians, which are an essential lifeline to provide for their basic needs, as well as how the blocking of payments to Gaza makes the financial sector responsible for denying access to humanitarian assistance and basic services to the civilian population in Gaza.

Remedy

Businesses should also develop strong and effective mechanisms to provide or cooperate in providing remedy to rights holders in Palestine that have been affected by their operations. Access to effective remedy is a core component of the UNGPs. Guiding Principle 1 recalls that home States should take 'appropriate steps to prevent, investigate, punish and redress' business-related human rights abuses within their territory or jurisdiction. Principle 22 provides that where 'business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes'.

